

JAN 25 1990

JOSEPH F. SPANIOL, J.  
CLERK

No. 89-1020

IN THE

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1989

ANDONIS MORFESIS,

Petitioner,

v.

DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Respondent.

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**RESPONDENT'S BRIEF IN OPPOSITION TO A  
PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF  
NEW YORK, APPELLATE DIVISION, FIRST  
DEPARTMENT**

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January 25, 1990



## COUNTER QUESTIONS PRESENTED

1. Whether notice of a criminal contempt proceeding served by leaving a copy of and mailing one to an address petitioner was required by statute to register with a governmental agency contravenes the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?
2. Whether the jail sentences imposed from seven separate criminal contempt proceedings may be aggregated to provide petitioner criminal due process protections that would not otherwise be available?



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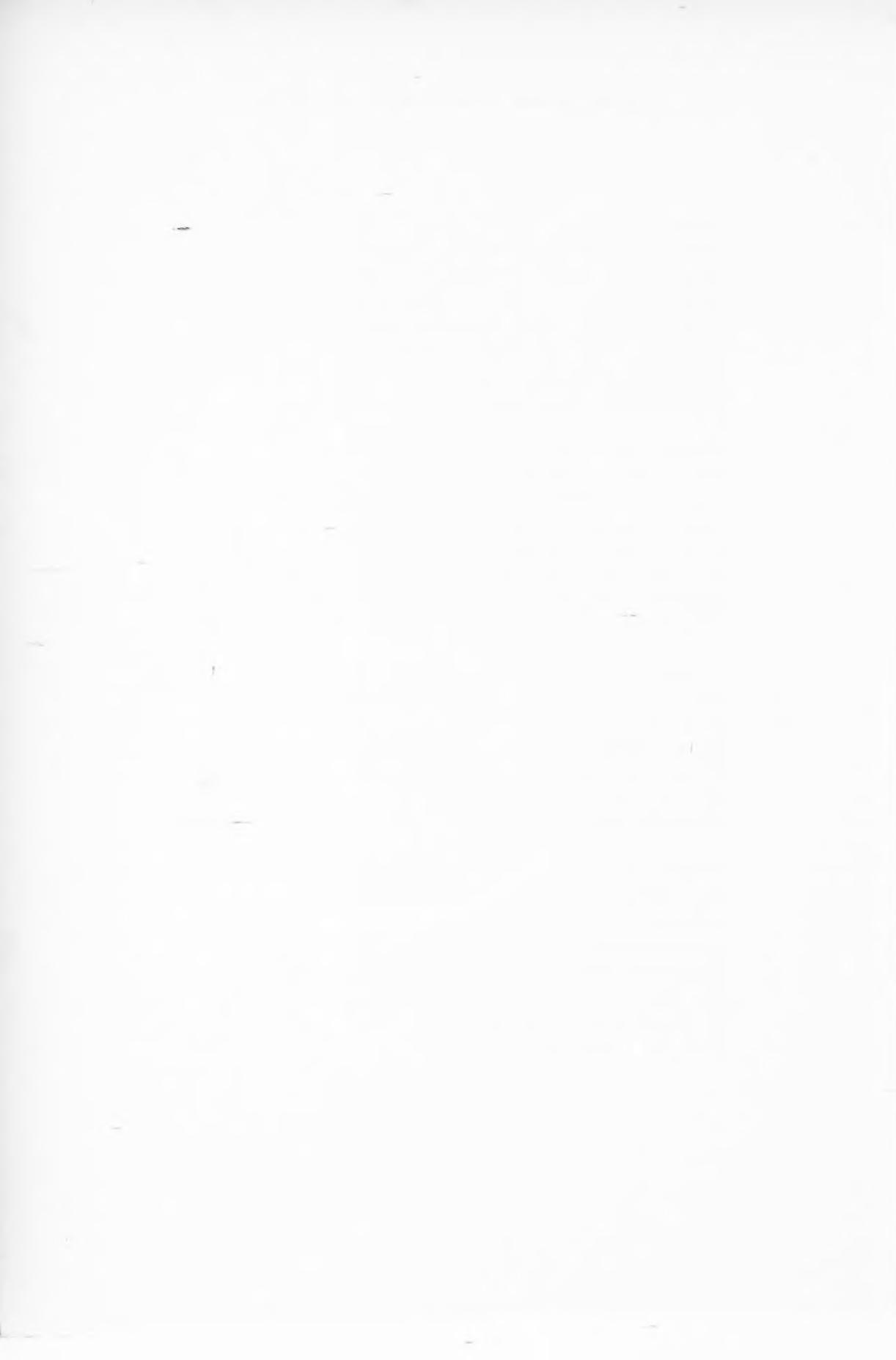
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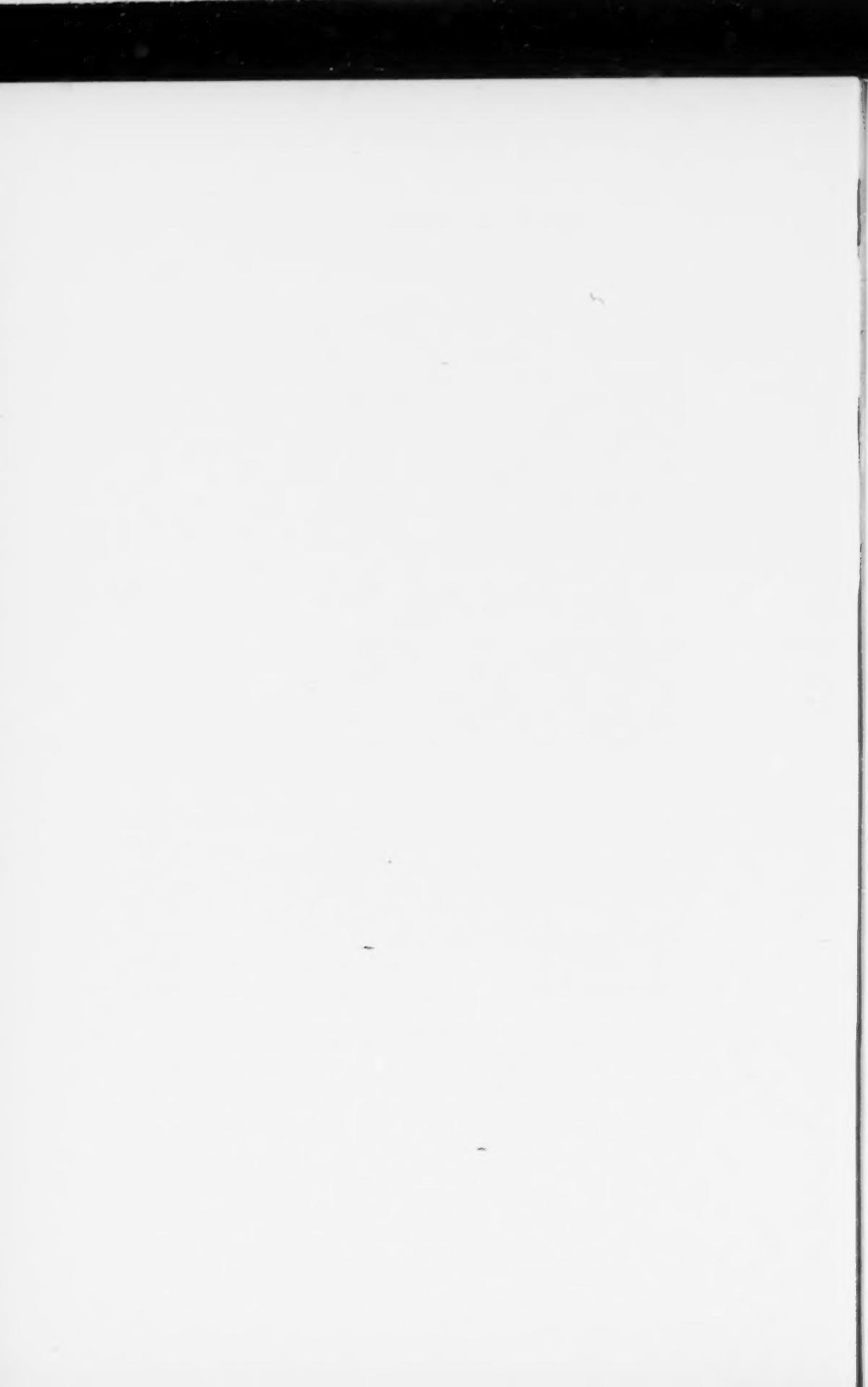
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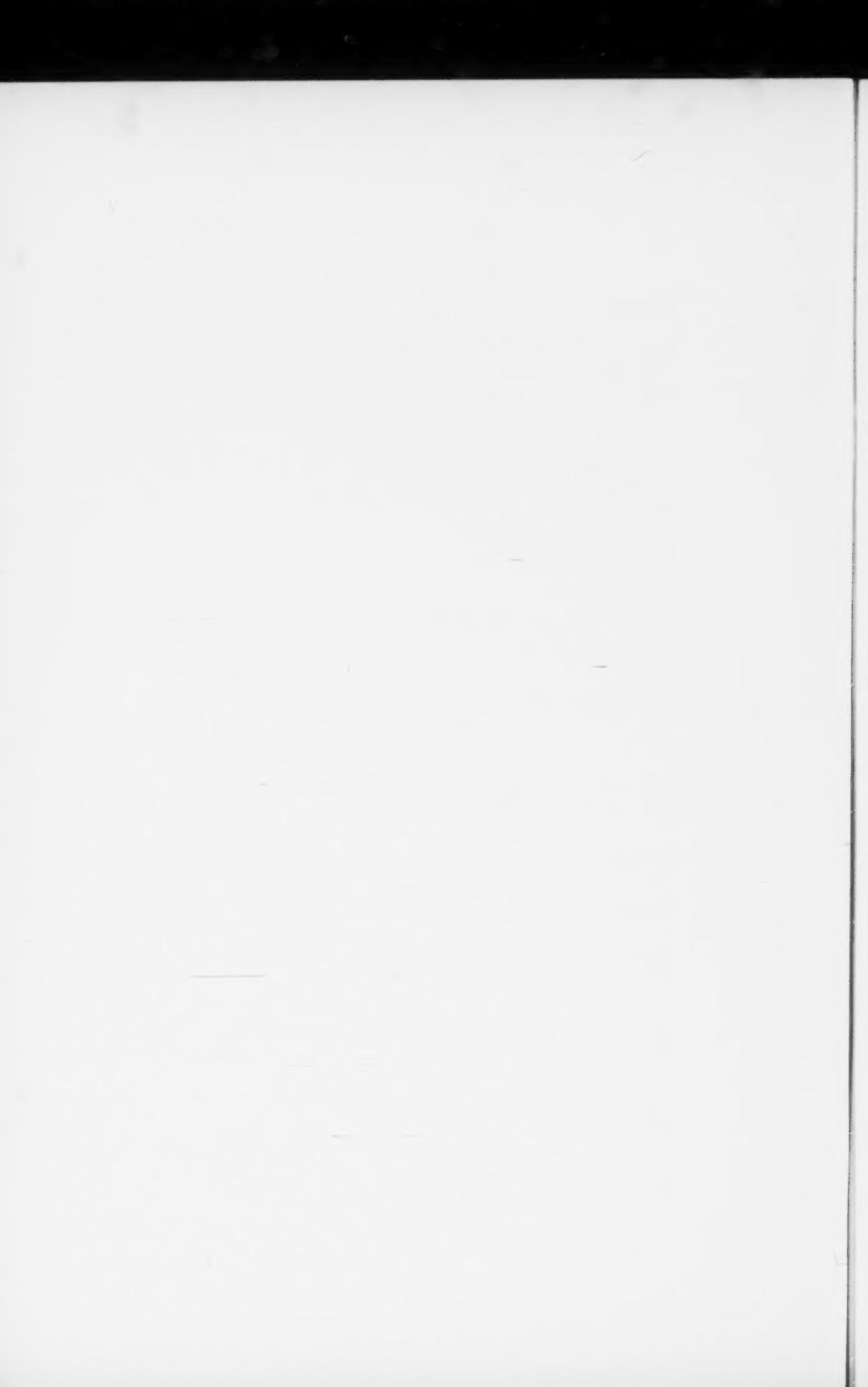
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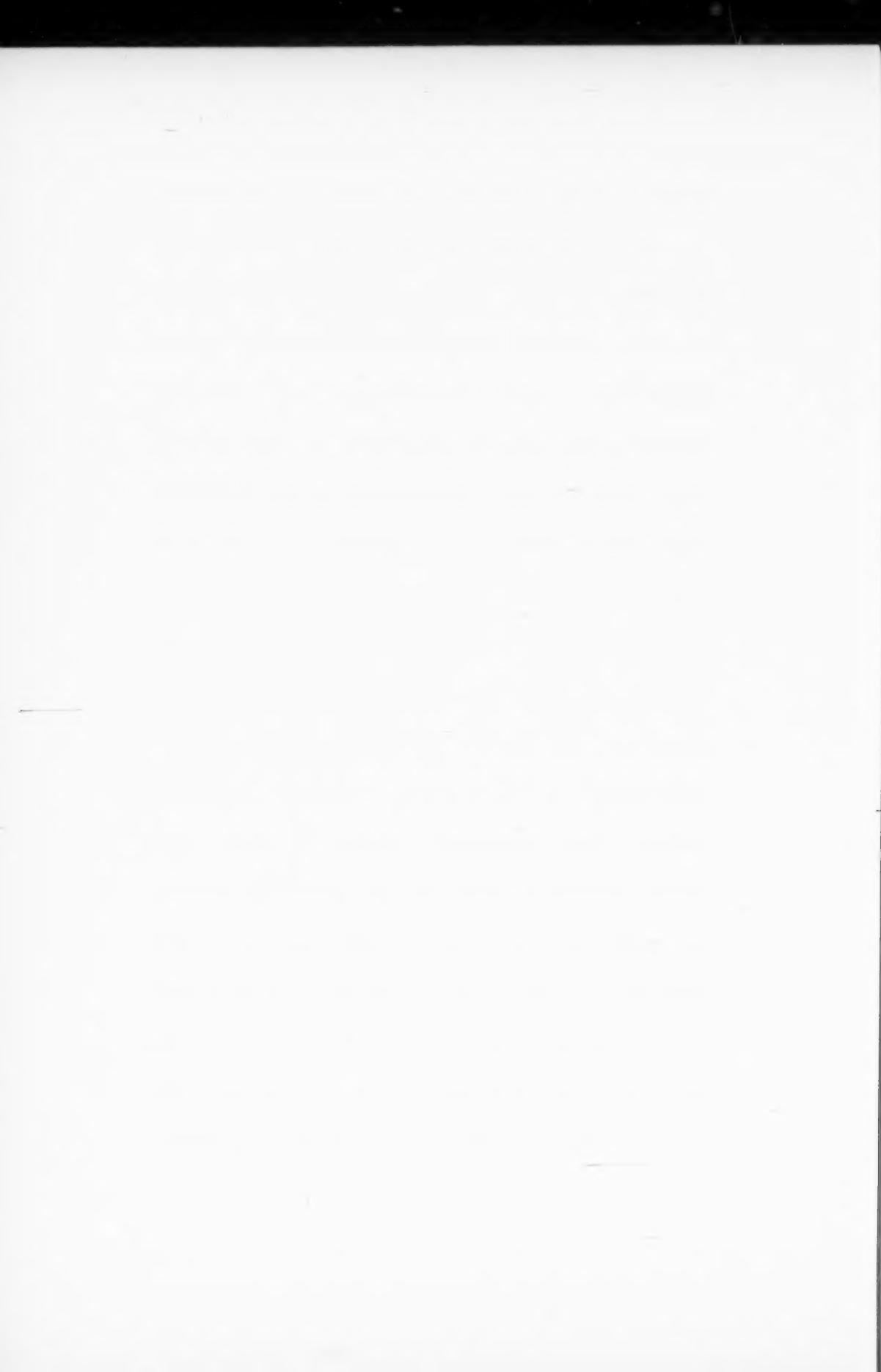
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**COUNTER-STATEMENT OF FACTS**

The petitioner, Andonis Morfesis, is the owner of residential multiple dwellings in New York City. In the winter of 1985-1986 he failed to provide heat and hot water to the tenants in seven buildings as required by the New York City Administrative Code,



which sets forth various standards, including minimum temperatures that must be provided ("NYC Admin. Code") §§27-2029, 27-2031. Based on violations recorded by its inspectors, the Department of Housing Preservation and Development of the City of New York ("HPD") commenced seven separate code enforcement proceedings in the New York City Civil Court, New York County, which resulted in orders directing petitioner to comply with statutory standards for the provision of heat and hot water and, ultimately, in the seven separate contempt orders that petitioner seeks to have this Court review. Each of the contempt orders imposed a thirty-day jail sentence for criminal contempt and expressly states that the sentence may be reduced once the petitioner appears or is brought before the Court (Respondent's Appendix ["Resp.



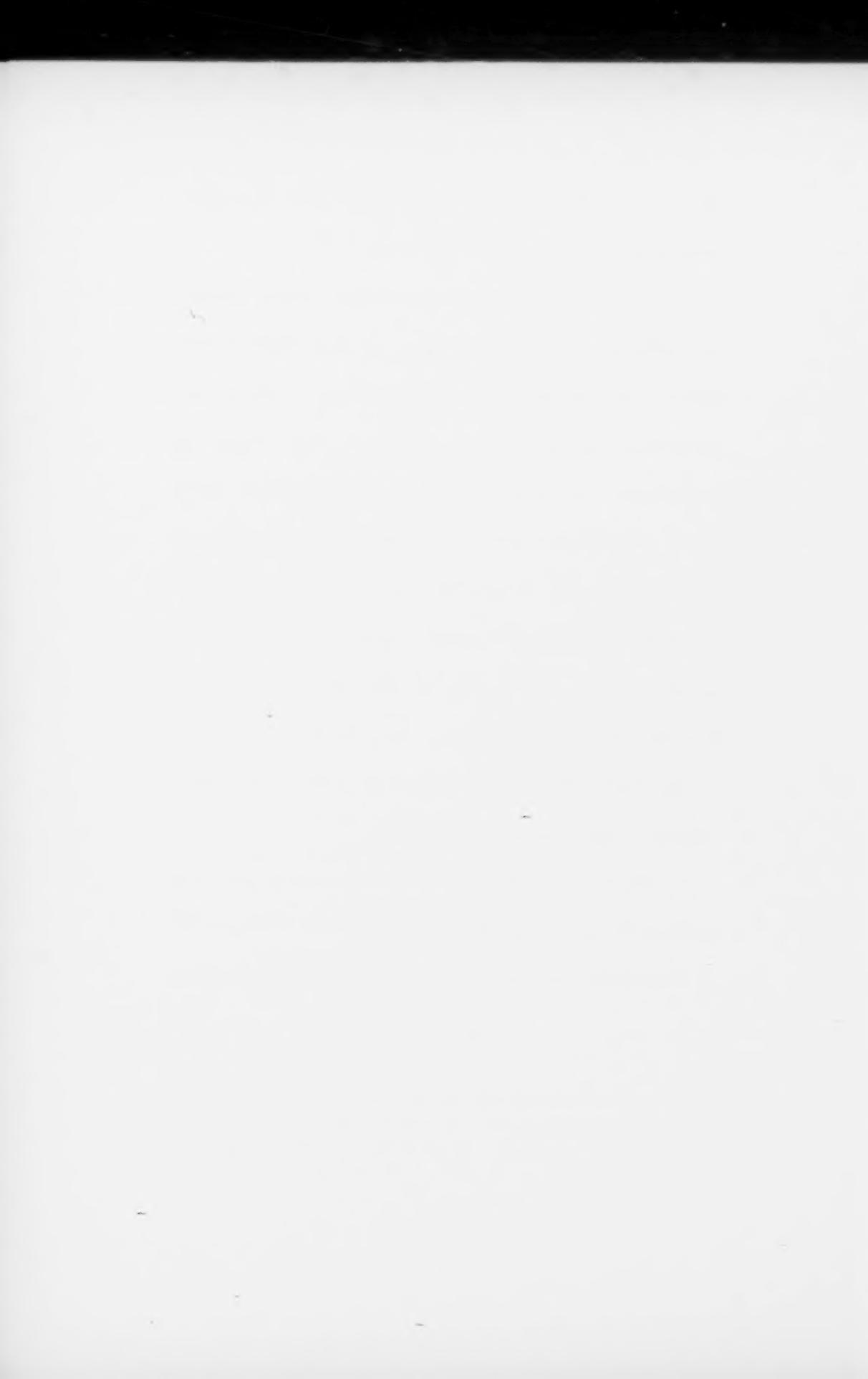
App."] at A4, A10, A16, A22, A28-29, A35, A40-A41).

The contempt proceedings were based on interim and final orders in the underlying code enforcement proceedings directing petitioner to provide heat and hot water as required by statute. Those orders were duly served on the petitioner at the address that he was required by the statute to register with HPD and update within five days should there be a change of address ("registered address") See N.Y.C. Admin. Code §§27-2097, 27-2098, 27-2099, 27-2100. (Resp. App. at A48-A54)

When violations continued to be recorded on later HPD inspections of tenants' apartments in the seven buildings,<sup>1</sup> HPD

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<sup>1</sup>When the statutory minimum for heat was an indoor temperature of 68°F. and 120°F. for hot water, indoor temperature readings as (Footnote Continued)



commenced proceedings for civil and criminal contempt under the New York Judiciary Law ("Jud. Law") by order to show cause. See Jud. Law, §750 et seq. Each show cause order gave notice of the time and place of the hearing and of the criminal and civil contempt charges, demanded petitioner's attendance and, as required by the Judiciary Law §751, warned of the possible imposition of fines or imprisonment. The supporting affirmation gave notice of the nature of the disobedience and the essential facts underlying it.

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(Footnote Continued)

low as 44°F., 50°F., 46°F., 48°F., 40°F. and 58°F. were recorded in each of six of the seven buildings. No heat was required in the seventh building at that time, because the outdoor temperature was above 55°F. Hot water temperatures as low as 38°F., 36°F., 40°F., and 32°F. were recorded in the buildings. Multiple violations were placed on each building with one building having as many as fifteen heat and twenty-one hot water violations.



The show cause orders directed that service be made in accordance with the New York Civil Practice Law and Rules ("CPLR") and the New York City Civil Court Act ("NYCCA"). As permitted by CPLR §308 and NYCCA §110(m), the orders to show cause and affirmations were served by delivering copies to a "person of suitable age and discretion" at the address petitioner registered with HPD, which was petitioner's business office, and mailing a copy to petitioner at that same address, which petitioner stated in his HPD Registration was also his residential address. CPLR §308(2) does not require that a diligent effort be made to serve a person in-hand before utilizing this method of service. See CPLR §308(2); NYCCA §110(m) (Petitioner's Appendix ["Pet. App."] 35-44).

Petitioner and the other respondents in the contempt proceedings appeared by



attorney on the return date. Under CPLR §3211(e), petitioner waived objections to personal jurisdiction in six of these proceedings based on his failure timely to assert them by answer or motion. At the commencement of the contempt hearing, the trial court granted an application by petitioner's attorney for separate contempt orders in the five underlying enforcement proceedings that had been previously consolidated on HPD's motion. The other two proceedings were heard separately.

Petitioner chose not to attend the contempt hearings and did not testify on his own behalf at any of the hearings. In six of the proceedings, lack of personal jurisdiction was not raised until after HPD had put in its case. In two decisions dated August 6, 1986 and another dated August 11, 1986, the trial judge found petitioner in civil and criminal contempt for his wilful



disobedience of its injunctive orders and set a single sentencing hearing for these proceedings for August 13, 1986 at 2:00 p.m. Each decision expressly stated that an arrest warrant would be issued if the petitioner was not personally present for sentencing (See Pet. App. 10-18).

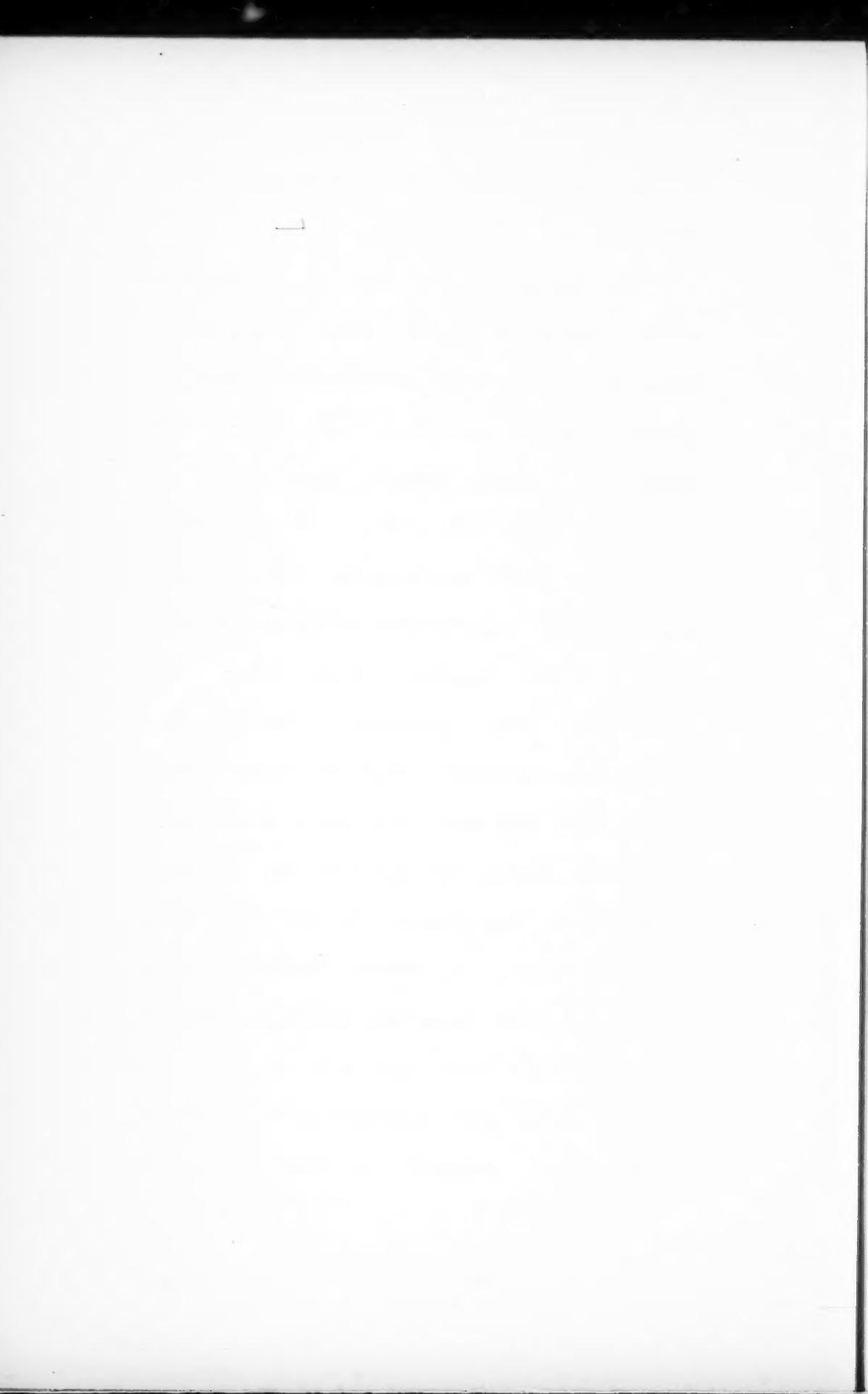
Petitioner did not appear at the sentencing hearing. Instead, three attorneys appeared on his behalf. After hearing argument, the trial court adjourned the matter sine die subject to the petitioner's appearance before the court either voluntarily or subject to an arrest warrant. The court subsequently signed the seven arrest orders in which he sentenced petitioner to 30 days in jail in each, to run consecutively, but specifically stated that the sentences could be reduced upon petitioner's appearance in Court (Resp. App.



at A4, A10, A16, A22, A28-A29, A35, A40-A41).

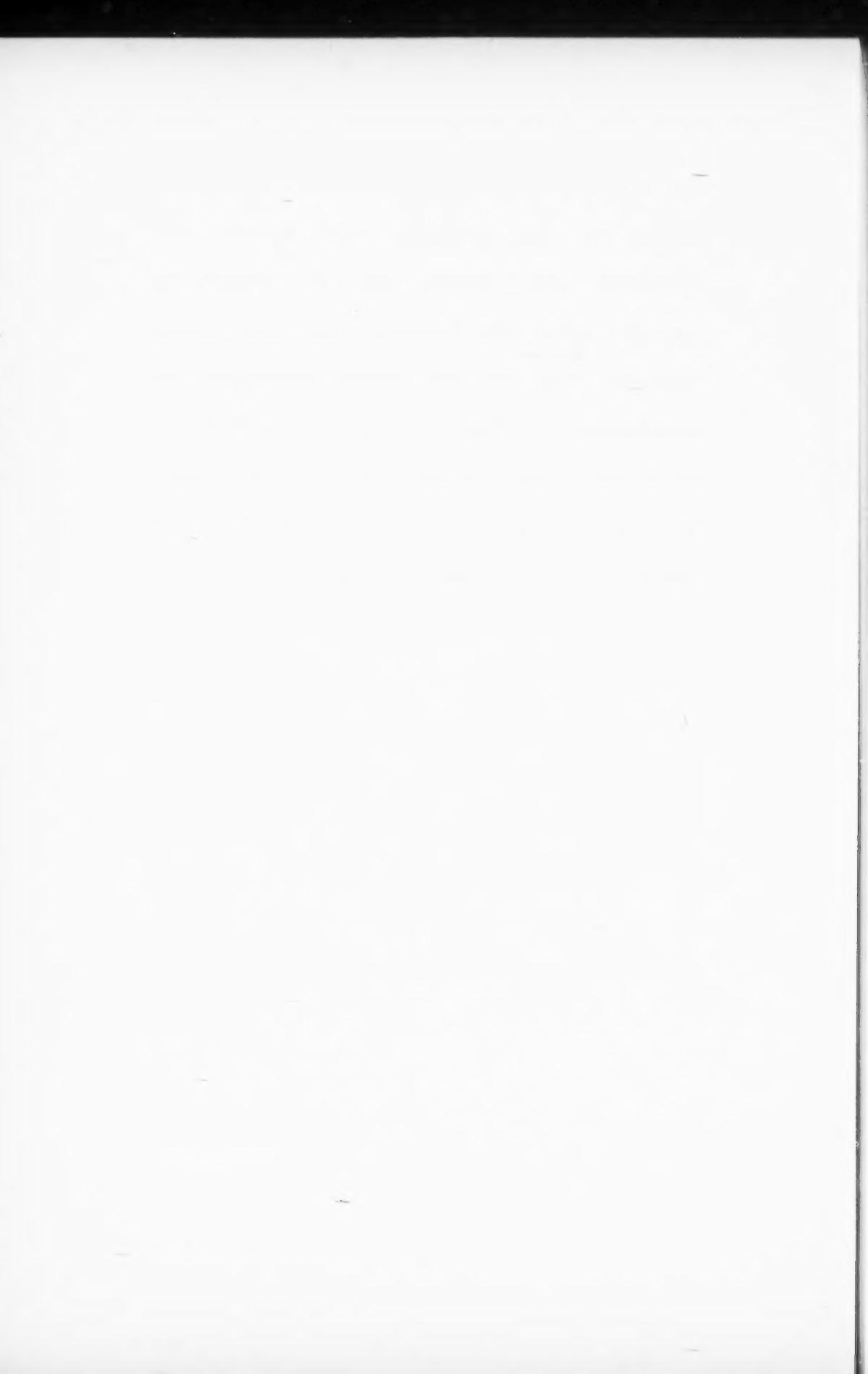
On appeal to the New York Supreme Court, Appellate Term, First Department, based on this Court's decisions in Cooke v. United States, 267 U.S. 517 (1925) and Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), the Appellate Term rejected petitioner's constitutional argument and unanimously affirmed the Civil Court. The Appellate Term found that jurisdiction over petitioner's person was obtained in conformity with the United States Constitution and New York law. (Pet. App. 1-5). On appeal, by leave of the Appellate Term, First Department, to the New York Supreme Court, Appellate Division, First Department, the Appellate Division affirmed without opinion (Pet. App. 6-9, 30-32).

Petitioner then appealed as of right on constitutional grounds to the Court of



Appeals. After the submission of letter briefs by the parties, that appeal was dismissed sua sponte by the Court of Appeals upon the ground that the order appealed from did not finally determine the proceedings (Resp. App. A43-A44). Petitioner then moved in the Appellate Division for leave to appeal to the Court of Appeals, which was denied (Pet. App. 33-34).

Stays pending the appeals of the seven arrest orders were granted by the Appellate Term and have continued through the state appellate process. On November 1, 1989, the Appellate Division granted a stay pending filing and disposition of a petition for certiorari to this Court.

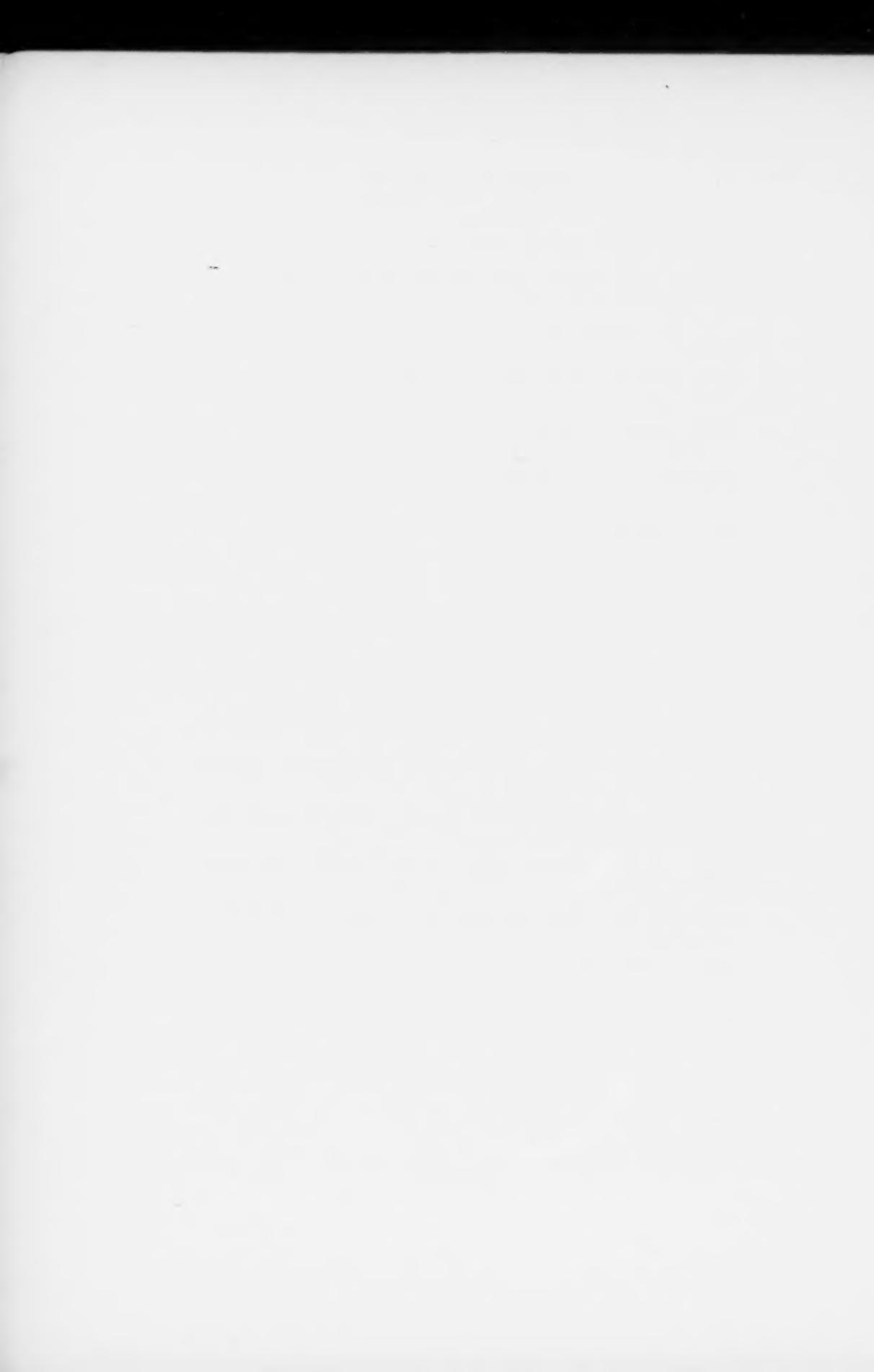


## OPINIONS BELOW

(1)

### **The New York City Civil Court Opinions**

In three opinions, two dated August 6, 1986 and a third dated August 11, 1986, the Civil Court found the petitioner in civil and criminal contempt based on his non-compliance with its orders. The Civil Court held that NYCCA §110(m) is a valid exercise of the State's power to ensure that parties receive proper notice of proceedings, that mailing to the address the petitioner had filed with HPD was sufficient under NYCCA §110(m) and CPLR 308(2) and (4), and that there had been valid personal service on the petitioner. In so holding, the Court observed that if petitioner had a residence at a different address from that he had registered with HPD, failure to serve at that address was the petitioner's fault and not that of HPD (Pet. App. 15-16, 21-22).



In the opinion dated August 6, 1986 relating to the five proceedings which had a consolidated contempt hearing, the Civil Court found that there was "no doubt whatever" that the petitioner's acts in failing to provide heat and hot water were willful and in violation of the court's order (Pet. App. 17). The court credited the tenants' testimony, which was in substance that they had very little heat throughout the heating season, and that of HPD's inspector, who had observed the boilers, all of which were in "deplorable" condition and some of which were not functioning. The Civil Court concluded, "The extreme temperatures of the buildings over an extended period of time and the total absence of hot water can only be construed as a disregard for the life and health of the numerous tenants in the buildings at issue here" (Pet. App. 13, 17). Based on the "absolutely deplorable



conditions" in the record, the court determined that a criminal contempt jail sentence should be imposed (Pet. App. 18).

In its opinions, dated August 6, 1986 and August 11, 1986, the Civil Court found that the petitioner had willfully violated the court's order in the sixth and seventh proceedings based on evidence of extremely low heat and hot water temperatures. In these cases, petitioner had conceded the lack of adequate heat and hot water, which the court construed as "blatant" disregard for the tenants' life and health, the Court found that a criminal contempt sentence should be imposed.

In each opinion, the Civil Court set a sentencing hearing for August 13, 1986. The court stated that at that time when the petitioner was personally before the court it would determine the length of the jail



sentences and that an arrest warrant would be issued should he not appear in person.

Since petitioner did not personally appear at the sentencing hearing, the court issued seven arrest warrants in which he sentenced petitioner to 30 days in jail in each of the seven proceedings to run consecutively, but expressly stated that the sentences may be reduced upon petitioner's appearance in court.

(2)

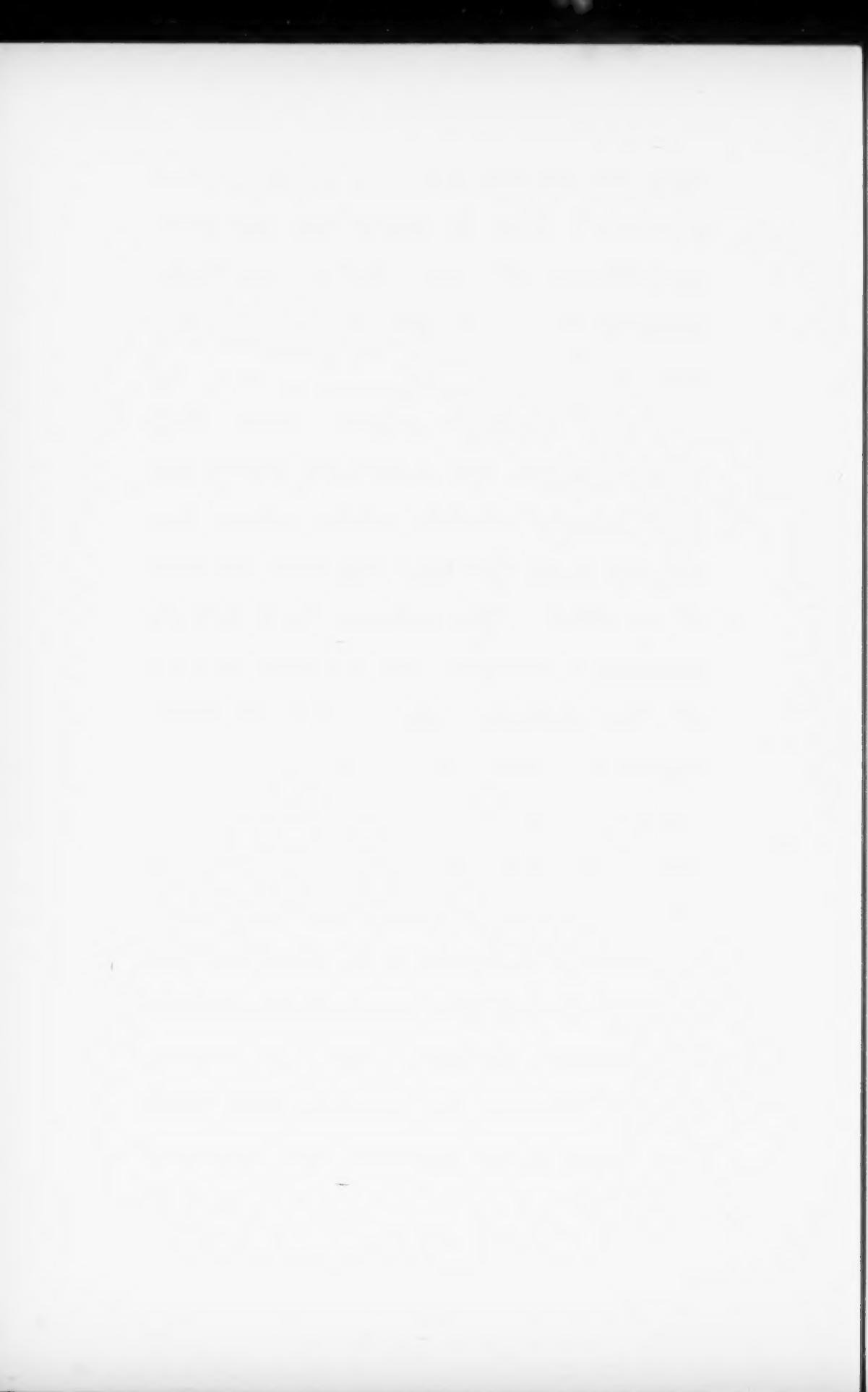
**The New York State Supreme Court  
Appellate Term Opinion**

The Appellate Term of the Supreme Court unanimously affirmed the orders and warrants of arrest of the Civil Court in an opinion reported sub. nom. Department of Housing Preservation and Development of the City of New York, 24 West 132 Equities, Inc., at 137 Misc.2d 459, 524 N.Y.S.2d 324 and in two opinions which relied on it. After reviewing the record, the Appellate



Term was satisfied that HPD had established petitioner's guilt of willful and deliberate disobedience of the court's underlying mandates beyond a reasonable doubt (Pet. App. 2).

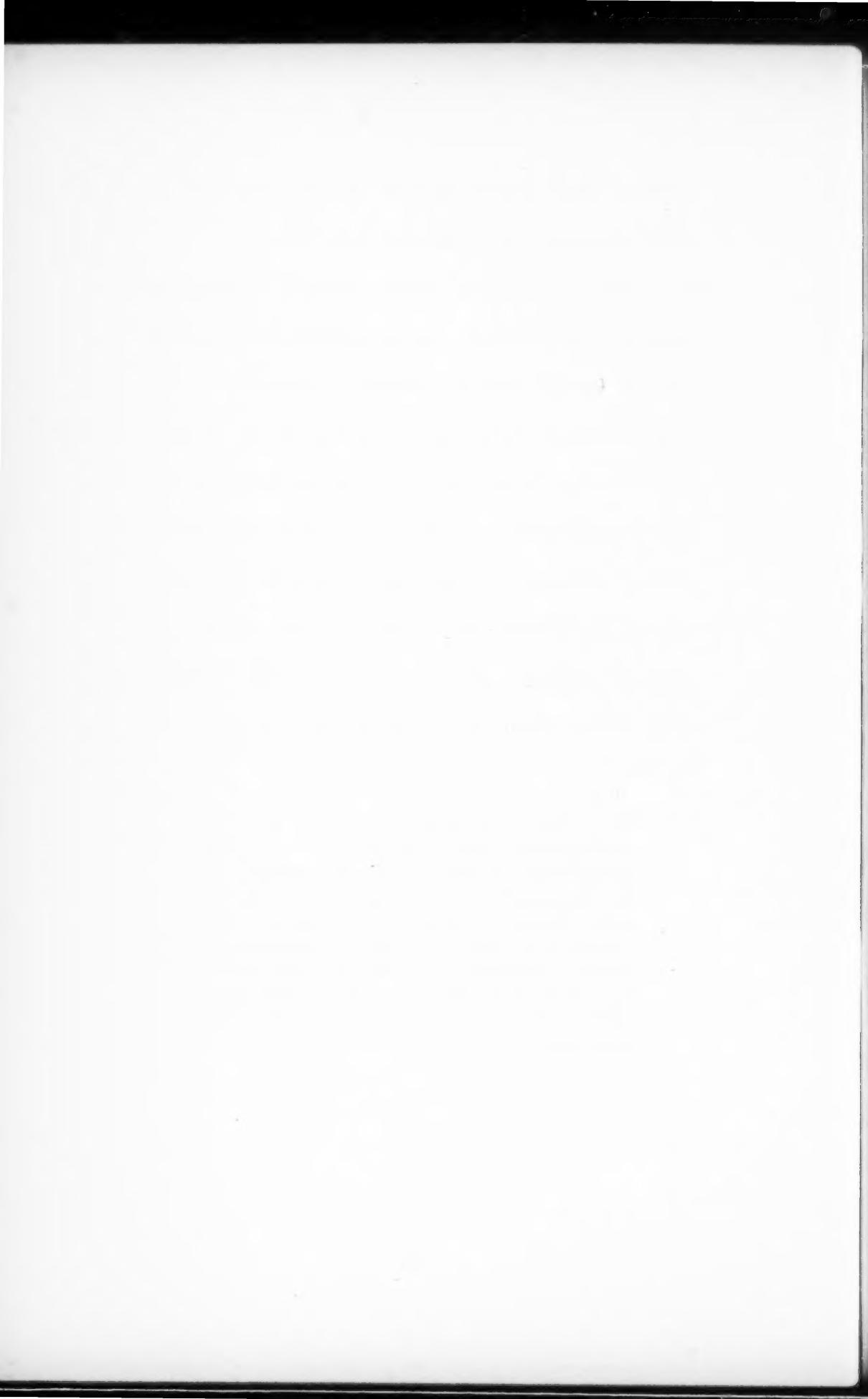
The Appellate Term held that jurisdiction over the petitioner's person had been lawfully obtained where service was effected under the "leave and mail" provision of the CPLR. The Appellate Term rejected petitioner's argument that personal delivery of the contempt papers was required, reasoning that a criminal contempt proceeding is a civil special proceeding under New York law and is governed by civil rather than criminal procedure (Pet. App. 3-4). In support of its conclusion that personal service, as a jurisdictional predicate for criminal contempt, does not require personal delivery, the Appellate Term noted that there is no appellate case expressly



holding that personal delivery is required or that statutory alternatives are infirm.

The Appellate Term stated, "Personal delivery of process, as a heightened form of notice is of course always preferable, but due process does not require it in special proceedings such as this one so long as the party charged is notified of the accusation and is afforded a reasonable time to defend," citing Judiciary Law §751(1) and Cooke v. United States, 267 U.S. 517, 537 (1925). The court went on to observe (Pet-App. at 5):

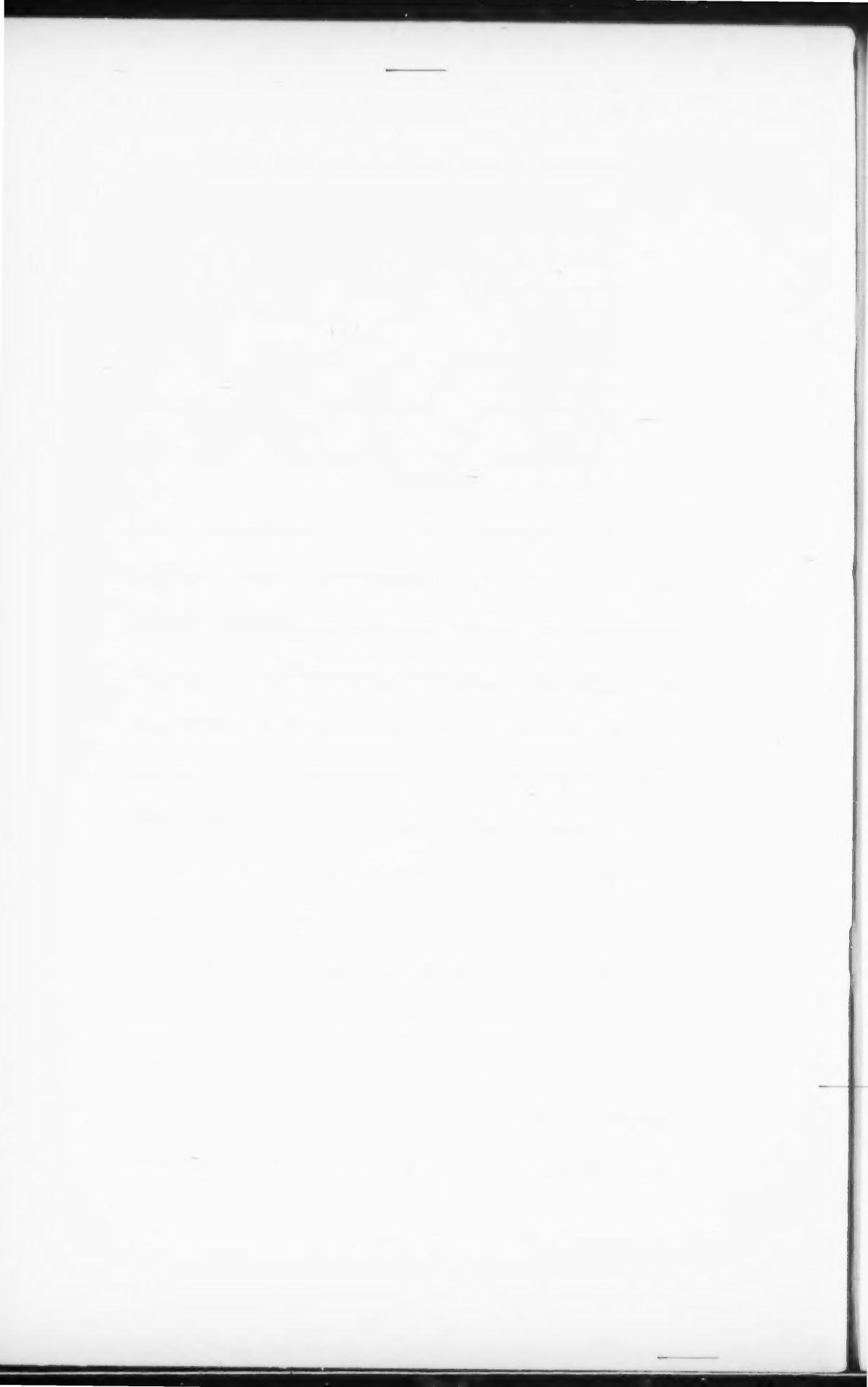
In the particular context of contempts not committed in the immediate presence of the court, it is frequently the case that those who have flagrantly violated the court's orders are not disposed to make themselves readily available for personal delivery of notice that they are to be prosecuted for contempt of those orders.



## REASONS FOR DENYING THE WRIT

**PETITIONER WAS GIVEN  
REASONABLE NOTICE OF THE  
CHARGES OF CRIMINAL  
CONTEMPT AND AN  
OPPORTUNITY TO DEFEND AS  
REQUIRED BY DUE PROCESS.  
PETITIONER RECEIVED ACTUAL  
NOTICE OF THE CHARGES,  
APPEARED BY ATTORNEY AND  
PUT IN A DEFENSE.**

In support of his application for review, petitioner maintains that service pursuant to state statutes permitting notice of a criminal contempt proceeding to be left at and mailed to an address that petitioner was required to register by statute contravened his rights under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and that the decisions of the New York State courts that service was not constitutionally defective are not in accordance with recent decisions of this Court. To the contrary, the decision of the New York Supreme



Court, Appellate Term, affirmed by the Appellate Division, is consistent with the applicable determinations of this Court and petitioner has demonstrated no special or important reasons to justify further review on writ of certiorari.

The procedural due process standard required by the Constitution for notice in a non-summary criminal contempt proceeding was articulated by this Court in 1925 in Cooke v. United States, 267 U.S. 517, 537 (1925), and was recently reaffirmed. Young v. U.S. ex rel. Vuitton et Fils, S.A., 481 U.S. 787, 798-99 (1987). It requires that the "accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation," which includes the assistance of counsel and the right to call witnesses. Cooke, 267 U.S. at 537.



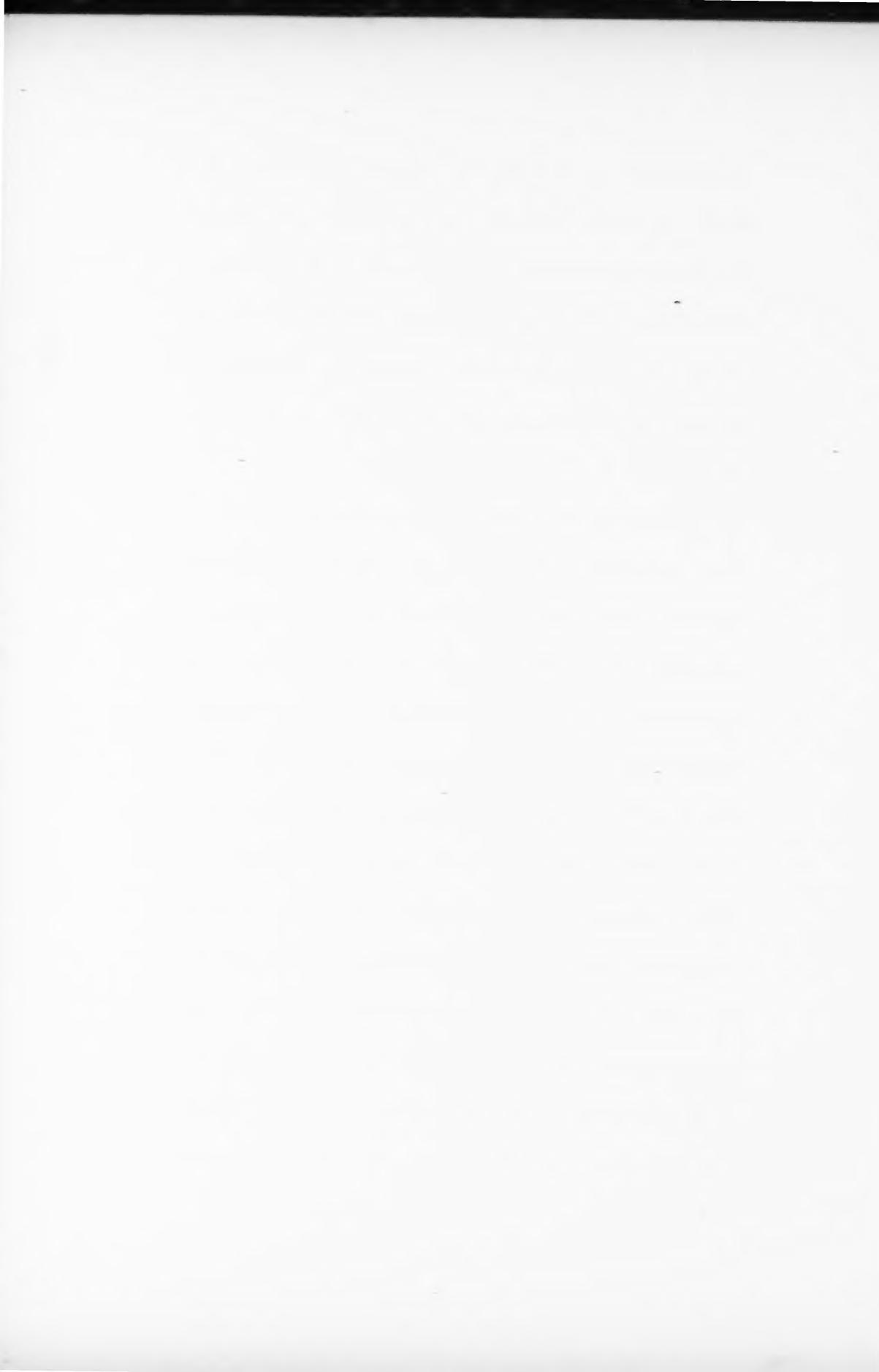
This Court has made clear that procedural safeguards for criminal contempts are based on the Due Process Clause and are not derived from the explicit requirements of the Sixth Amendment. Leyine v. United States, 362 U.S. 610, 616, reh'g denied, 363 U.S. 858 (1960). The determination of what is required may turn on the circumstances of a particular case. Id. "The provision of fundamental due process protections for contemnors accords with our historic notions of elementary fairness." Taylor v. Hayes, 418 U.S. 488, 500 (1974).

This Court has consistently refrained from prescribing the procedure required by due process in criminal contempt proceedings. In addressing the issue, this Court stated, "the exact form of the procedure in the prosecution of such contempts is not important." Cooke, supra, 267 U.S. at 536. In a more recent



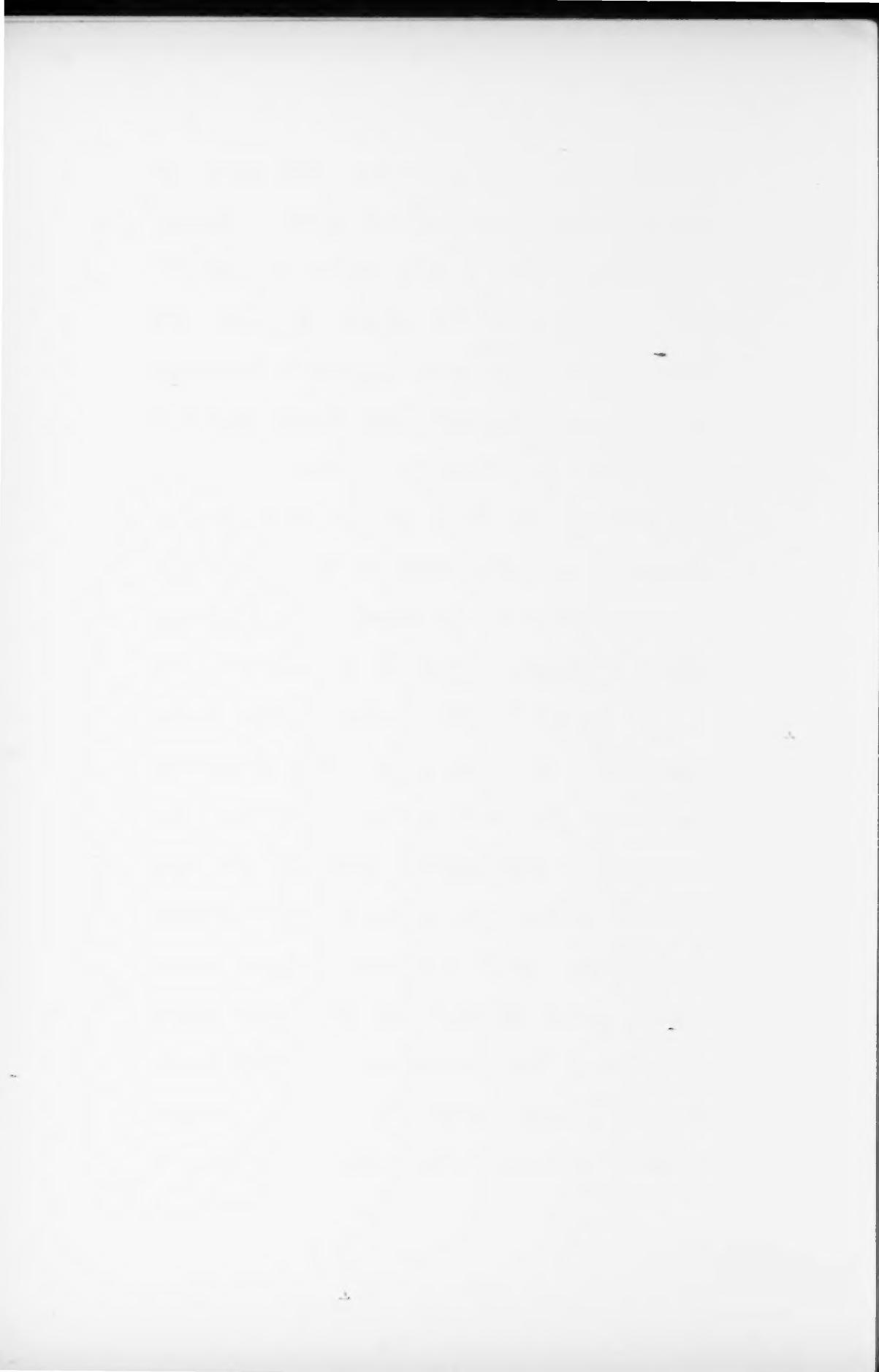
discussion in Taylor v. Hayes, *supra*, 418 U.S. at 500, where an alleged contemnor faced deprivation of liberty, the Court described the due process requirement as "some orderly process, however informal," citing Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

Because the contempt power is basic to the administration of a State's judicial system, the State's interest in the contempt process through which it vindicates the operation of that system is of great importance. Juidice v. Vail, 430 U.S. 327, 335 (1977) (citing Ketcham v. Edwards, 153 N.Y. 534, 539, 47 N.E. 918, 920 (1897)). Due process is satisfied if the notice employed provides "the fundamental requisite of due process of law [which] is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394 (1914). This Court has noted that it is not its



responsibility "to prescribe the form of service" that a state should adopt. Greene v. Lindsey, 456 U.S. 444, 445 n. 9 (1982).

It is for the State through its legislature and the court system to determine the procedure applicable to criminal contempt proceedings, including notice of the proceeding, as long as it affords the contemnor adequate notice of the charge and an opportunity to be heard. In Hicks on behalf of Feiock v. Feiock, 485 US 624, 108 S. Ct. 1423 (1988), where this Court addressed the question of classifying contempts as civil or criminal for the purpose of determining whether the due process protections required for criminal proceedings were applicable, this Court appears to have approved of giving notice by mail to the contemnor. This Court described the notice in Hicks, labeled "criminal in nature", as having been "sent to



respondent" and, in a footnote, the Court appears to say that that procedure was sufficient to satisfy due process. Id. at 1433; 1433 n.10.<sup>2</sup> Accordingly, and contrary to the petitioner's assertion (Pet. at 10), this Court's opinion in Hicks, does not support petitioner's conclusion that leave and mail service where the mailing is made to an address registered with HPD violates constitutional due process standards for notice.

Thus, in Hicks, this Court plainly did not expand the constitutional notice requirements applicable to criminal contempt proceedings, as petitioner would have this Court believe (Pet. at 8-10). The Hicks

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<sup>2</sup> In criminal contempt proceedings brought in the Federal Courts, personal delivery of notice is not required. See In re Sasson Jeans, Inc., 83 Bankr. 206, 217-18 (S.D.N.Y. 1988), remanded 86 Bankr. 336 (S.D.N.Y. 1988).



opinion states in a footnote, "one charged with a crime is 'not only entitled to be informed of the nature of the charge against him but to know that it is a charge and not a suit'." 108 S. Ct. at 1433, n. 10 (citing Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 446 (1911)). This Court was only underscoring the Gompers Court's concern that an alleged contemnor should not be left in doubt as to whether the object of the contempt proceeding is relief or punishment. Gompers, supra, 221 U.S. at 446.

The criminal contempt proceedings now before this Court were brought pursuant to the New York Judiciary Law, which governs applications to the courts for a finding of contempt in the course of existing proceedings. Section 751, which applies to criminal contempt, provides in language similar to the constitutional standard, where a contempt is not committed in the presence



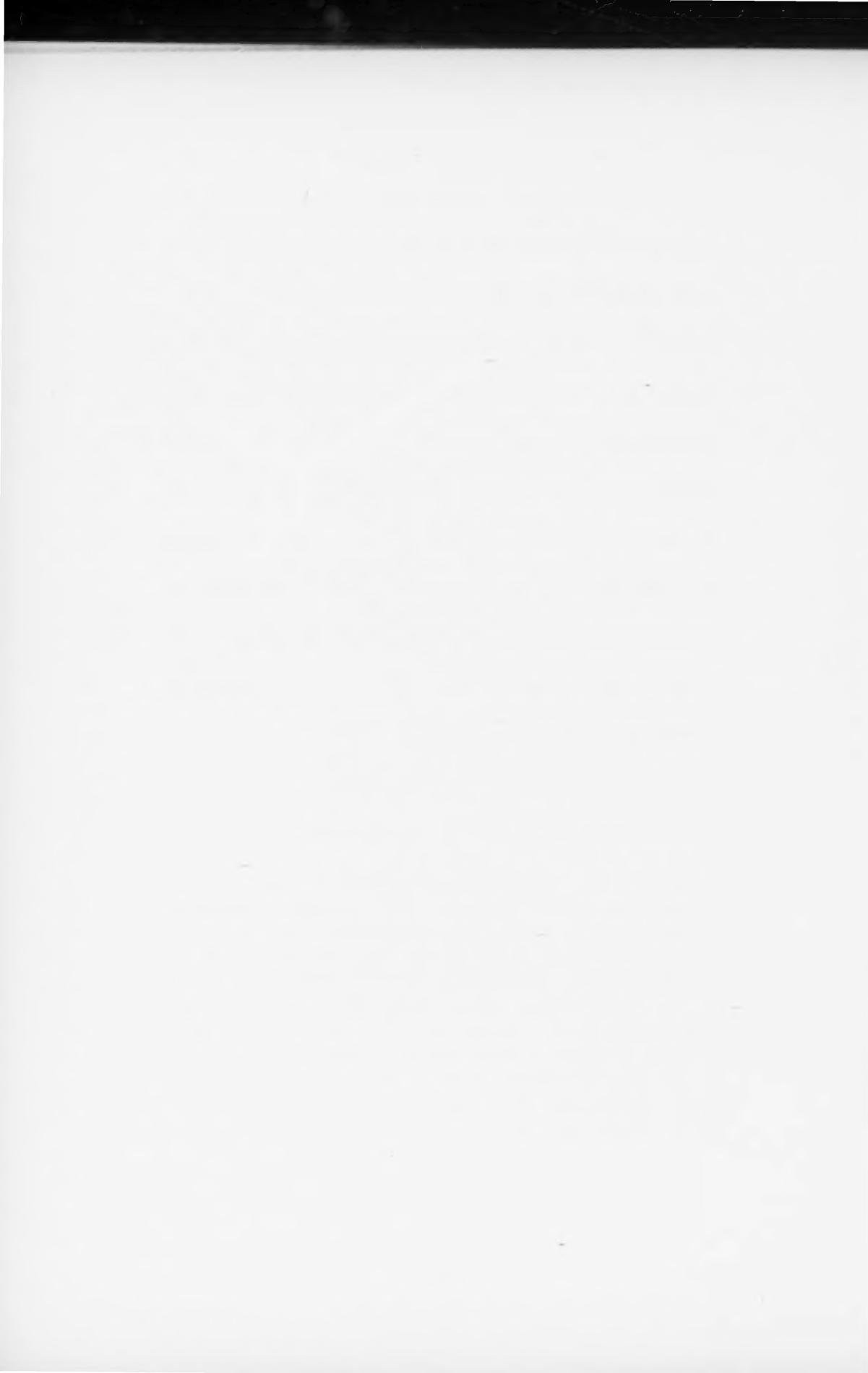
of the court, "the party charged must be notified of the accusation and have a reasonable time to make a defense." N.Y. Jud. Law §751(1)(reprinted in Resp. App. at A45). See Sassower v. Sheriff of Westchester County, 824 F.2d 184 (2d Cir. 1987). (upholding constitutionality of section 751 of the Judiciary Law on its face). As required by Section 756 of the Judiciary Law, each of these criminal contempt proceedings was commenced by motion, contained notice of the charges and a warning in 8 pt. type that failure to appear could result in imprisonment. These motions, which warned of the seriousness of the charges and the consequences of not appearing, satisfy the Gompers standard that the party served know that the proceeding is a charge which may result in punishment and not a suit.



The motions were served pursuant to the leave and mail provisions of CPLR §308 and NYCCA §110(m) (see Pet. App. 35-44)<sup>3</sup>. The motions were not left at the buildings, but delivered to the address that petitioner himself was required to list with HPD pursuant to section 27-2097 of the New York City Administrative Code, the purpose of which is to ensure that owners of residential dwellings may be actually and immediately contacted by HPD to resolve building violations.

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<sup>3</sup>The New York Legislature has since expanded the means by which personal jurisdiction may be acquired to include leaving at and mailing to the actual place of business by amending CPLR §308(2), 1988 N.Y. Laws ch. 125, 1987 N.Y. Laws ch. 115, 1986 N.Y. Laws ch. 77, and by adding a new section CPLR §312-a modeled on Rule 4 of the Federal Rules of Civil Procedure that provides for service by mail. 1989 N.Y. Laws ch. 274.



The legislative goal of the registration requirement in the context of housing code enforcement serves the legitimate state interest of ensuring that an owner of residential multiple dwellings is "subject to the immediate jurisdiction of the regulatory agencies and the courts." Amsterdam v. Goldstick, 136 Misc.2d 946, 947, 521 N.Y.S.2d 203, 204 (App. Term, 1st Dep't 1987). Service by mail at an address registered with a regulatory agency is more likely to provide actual notice than mailing to the last known residence and is more likely to further the State's interest of enforcing housing maintenance regulations since, as the Appellate Term recognized here, "it is frequently the case that those who have flagrantly violated the court's orders are not disposed to make themselves available for personal delivery of notice that they are to be prosecuted for contempt of those orders"

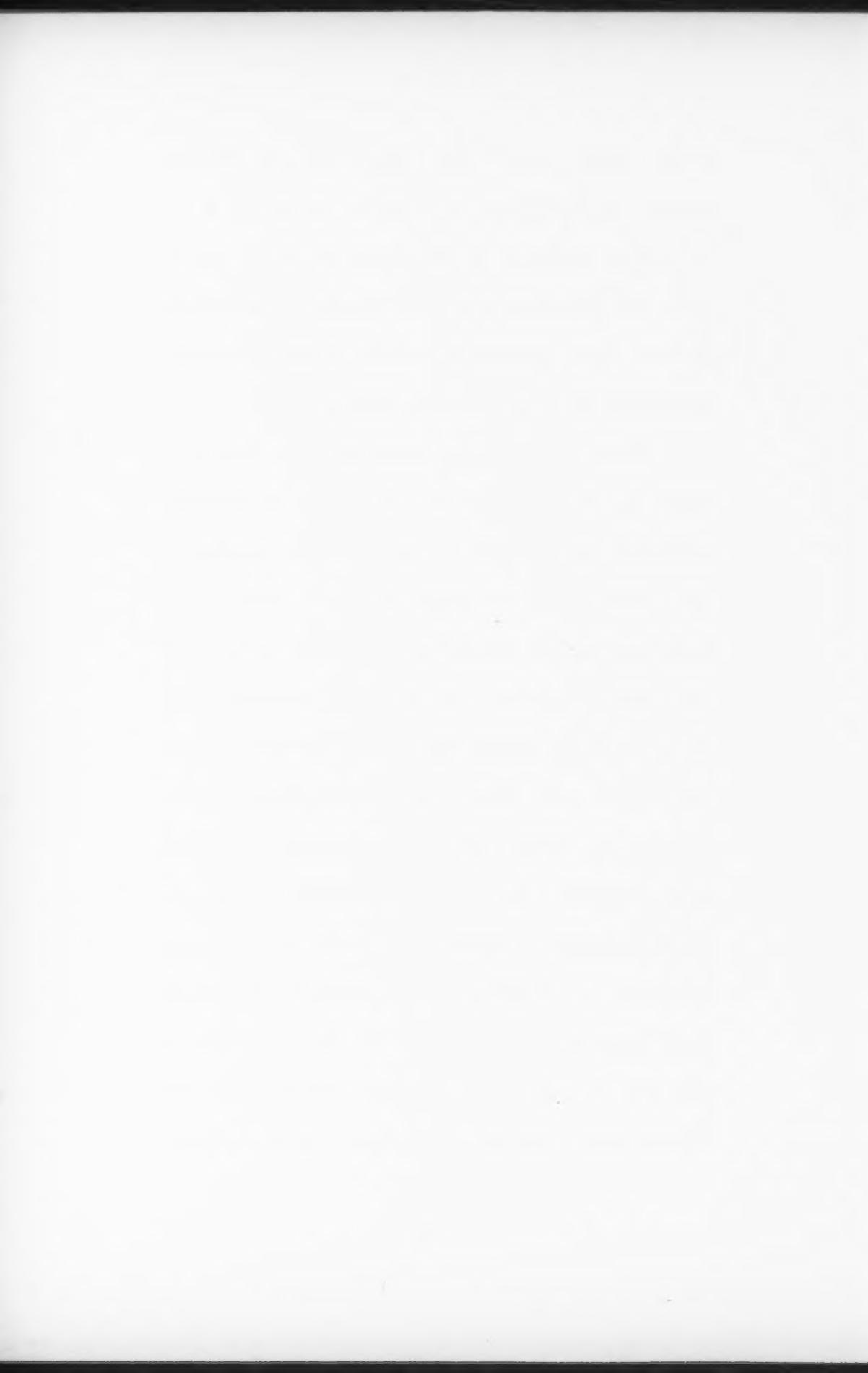


(Pet. App. 5). See also, In re Sassen Jeans, Inc., supra, 83 Bankr. at 217 n.6.

The efficacy of the type of notice given here is demonstrated by these proceedings where the petitioner had actual notice, appeared by counsel and defended.

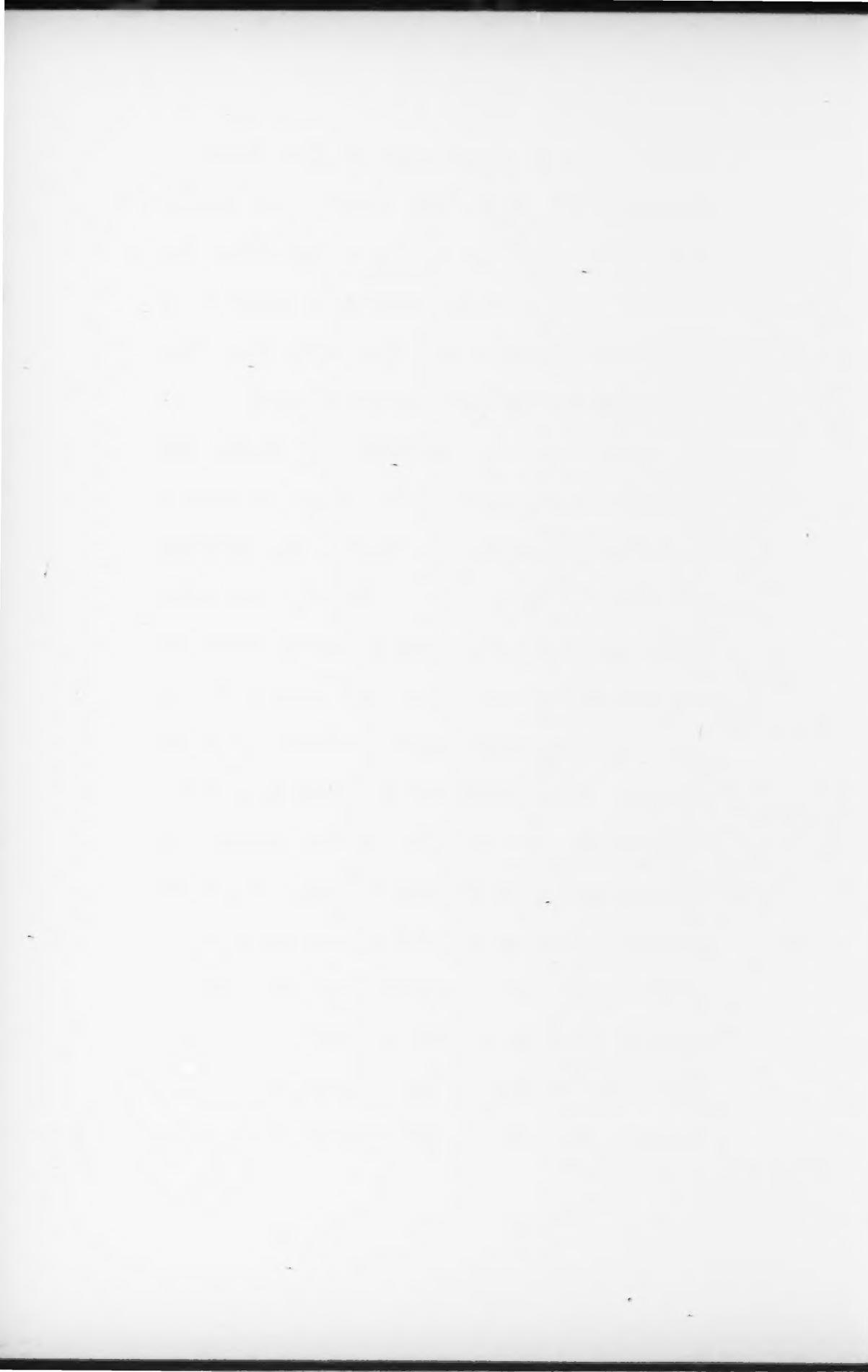
Thus, the notice required by the New York State statutes to commence a criminal contempt proceeding -- leaving the motion at and mailing it to the address which the building owner himself provides to a housing regulatory agency, more than satisfies the constitutional requirement of "advising" the contemnor of the charges against him.

Young v. U.S. ex rel. Vuitton et Fils, S.A., supra, 481 U.S. at 798-99; Cooke v. United States, supra, 267 U.S. at 537; see Sterling v. Environmental Control Board of New York City, 793 F.2d 52, 57-58; 58 n. 4 (2d Cir.), rehearing denied, 795 F.2d 8 (2d Cir.), cert. denied sub nom. Environmental



Control Board of the City of New York v. Sterling, 479 U.S. 987 (1986) (the Court made clear that the statutory provision for process that includes mailing a copy to a registered address on file with the City would satisfy the Due Process Clause).

There is no constitutional basis for petitioner's argument (Pet. at 10-11) that a state is required to apply its criminal procedure laws to criminal contempt proceedings for purposes of giving notice of the proceeding so long as the notice affords the requisite opportunity to defend. While contempt proceedings are sufficiently criminal in nature to require many procedural safeguards, they are not intended to punish conduct which is proscribed by the general criminal laws but, instead, seek to preserve respect for the court's authority. Young, 481 U.S. at 800. See Green v. United States, 356 U.S. 165, 186-87 (1958).



Consequently, the procedural requirements set forth in United States v. Tortora, 464 F.2d 1202, 1209 (2d Cir.), cert. den. sub nom. Santoro v. United States, 409 U.S. 1063 (1972) are not applicable where a person has not been indicted for a crime.

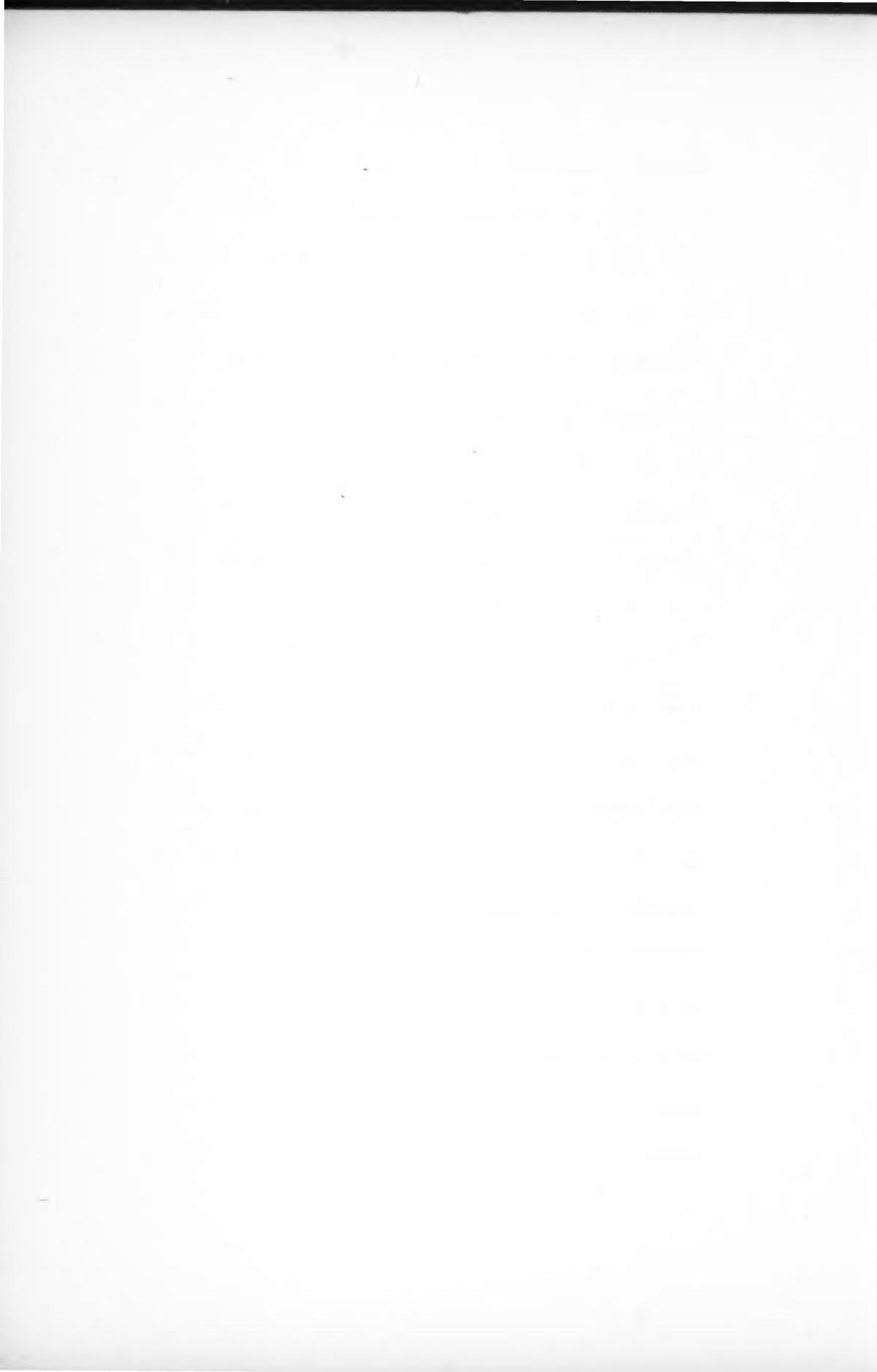
Significantly, where a criminal contempt proceeding is brought under Rule 42(b) of the Federal Rules of Criminal Procedure, no formal indictment or other imperatives are required so long as the contemnor has adequate notice. United States v. Martinez, 686 F.2d 334, 345 (5th Cir. 1982). And, the Federal Rules do not require personal delivery. See In re Sasson Jeans, Inc., supra, 83 Bankr. at 217-18.

In Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950), this Court stated, the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for

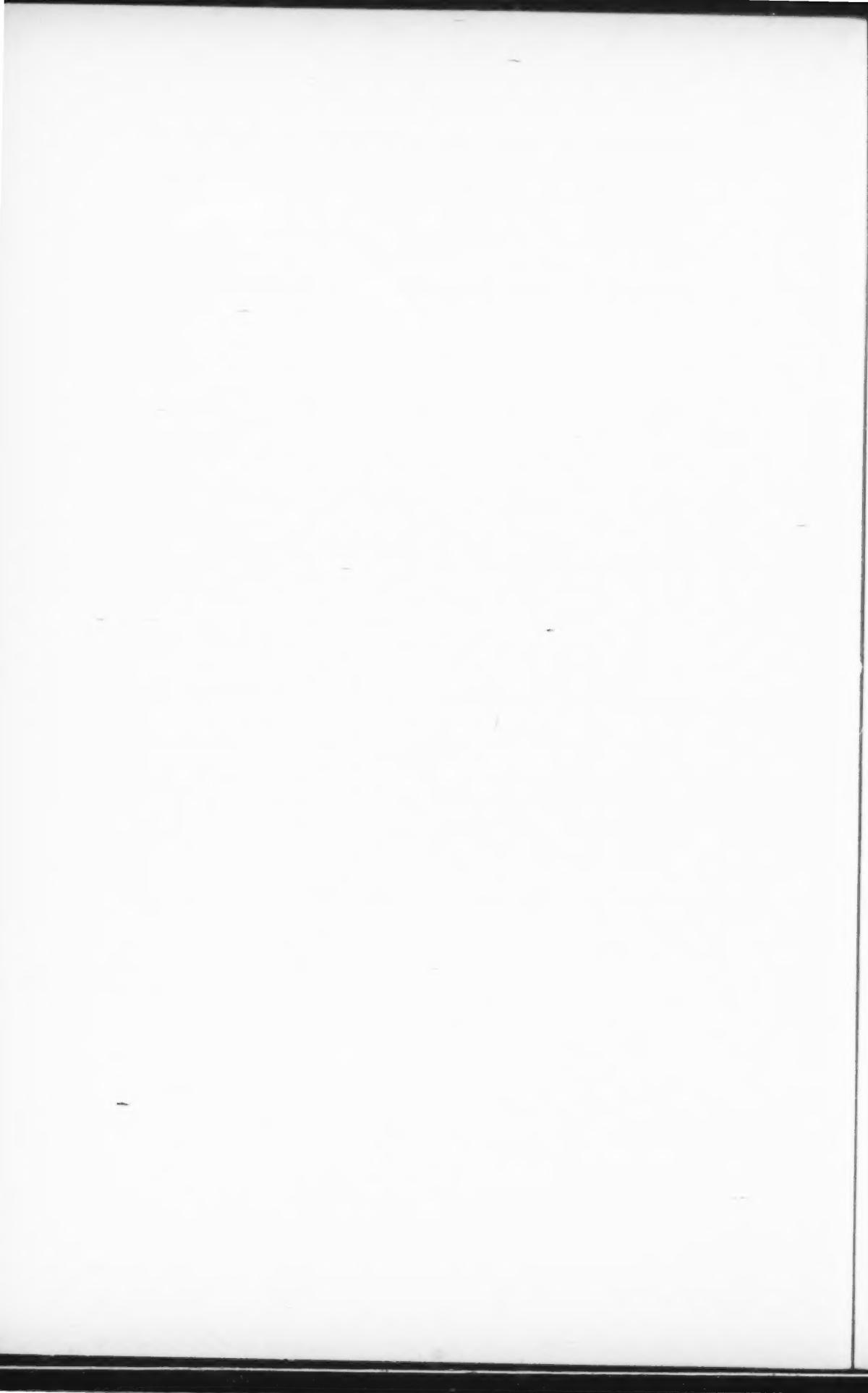


himself whether to appear or default, acquiesce or contest." However, this Court has also held that it is not a violation of due process to hold a hearing in a criminal contempt proceeding even though the contemnor was not present and to subject him to punishment where the contemnor had "suitable notice and adequate opportunity to appear." Blackmer v. United States, 284 U.S. 421, 440 (1932).

In these proceedings, petitioner had more than "suitable" notice of the criminal contempt proceedings based on his disobedience of court orders requiring him to provide heat and hot water as required by statute. The papers initiating the contempt proceedings included warnings of the seriousness of the charges and the consequences of not appearing. Although petitioner chose not to appear personally in court to defend against these contempt



charges, he sent his attorneys to appear on his behalf to explain his actions and present witnesses. Petitioner received all the process he was due under the Constitution.



(2)

THE JAIL SENTENCES IMPOSED FROM SEVEN SEPARATE CRIMINAL CONTEMPT PROCEEDINGS, INVOLVING SEVEN DIFFERENT BUILDINGS, MAY NOT BE AGGREGATED TO PROVIDE PETITIONER WITH CRIMINAL DUE PROCESS PROTECTIONS TO WHICH HE IS NOT OTHERWISE ENTITLED. IN ANY EVENT, THE SENTENCES IMPOSED ARE EXPRESSLY SUBJECT TO REDUCTION UPON PETITIONER'S APPEARANCE IN COURT.

Petitioner has argued alternatively that, even assuming personal delivery was not required in every criminal contempt proceeding, personal delivery was required here because the one-month jail sentences imposed on the seven separate charges relating to seven different buildings amounted to more than six months (Pet. at 12). That claim is without basis.

An alleged contemnor is entitled to a jury trial for a serious contempt, but not for a petty contempt. Frank v. United States, 395 U.S. 147, 148, rehearing denied, 396



U.S. 869 (1969). In making the determination of whether a crime is serious, federal courts look to the maximum authorized punishment. See, District of Columbia v. Clawans, 300 U.S. 617 (1937). In New York, the Judiciary Law authorizes a maximum sentence of imprisonment of thirty days for criminal contempt. N.Y. Jud. Law, §751(1). A jail sentence of no more than six months is considered petty for purposes of the right to a trial by jury. Codispoti v. Pennsylvania, 418 U.S. 506, 512 (1974). As the maximum penalty for criminal contempt in New York is thirty days, the criminal due process protection of trial by jury and other criminal due process protections do not attach. See Bloom v. Illinois, 391 U.S. 194, 211 (1968).

Here there were seven separate proceedings brought to compel the provision of heat and hot water in seven separate



buildings, which resulted in seven separate jail sentences. This fact distinguishes this case from Codispoti, supra, 418 US 506, where this Court held that multiple contempts during the course of a single trial, which resulted in an aggregate sentence exceeding six months, triggers criminal due process protections. Petitioner may not aggregate the seven separate 30-day sentences in seven entirely separate proceedings to obtain due process protections to which he otherwise would not be entitled.

In any event, where multiple contempts are committed during a single trial, this Court has held that a cumulative sentence greater than six months imposed after conviction may be reduced by the State to six months or less rather than retry the contempt with a jury. Taylor v. Hayes, 418 U.S. 487, 496 (1974). Here, the arrest



orders appealed from in each of the proceedings are non-final in that they direct that the petitioner be brought before the court at which time each term of imprisonment may be reduced by the trial court (Resp. App. at A4, A10, A16, A22, A28-A29, A35, A40-41).

Since petitioner may not aggregate his seven different jail sentences for seven different charges pertaining to seven different buildings for purposes of obtaining due process protections applicable to serious criminal proceedings, and, in any event, his sentences may be reduced when he appears in court, he has no basis upon which to demand personal delivery of the criminal contempt charges.



## CONCLUSION

**THE PETITION FOR A WRIT OF  
CERTIORARI SHOULD BE DENIED.**

January 25, 1990

Respectfully submitted,

VICTOR A. KOVNER,  
Corporation Counsel  
of the City of New York,  
Attorney for Respondent,  
100 Church Street  
New York, N.Y. 10007  
(212) 566-4338

LEONARD J. KOERNER,\*  
FAY LEOUSSIS,  
JANESSA C. NISLEY,  
JERALD HOROWITZ,  
of Counsel.

\*Counsel of Record



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated August 25, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

TONY MORFESIS,

Respondents.

-----X  
**WARRANT OF ARREST**

Index HP-1531/85

Premises:

369 West 126th St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for  
failure to comply with Orders entered



December 17, 1985 and January 16, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

1) TONY MORFESIS was properly served the December 17, 1985 and January 16, 1986 Orders and TONY MORFESIS was properly served with the April 15, 1986 Order to Show Cause to Punish for Contempt.



2) Upon the DHPD inspection reports dated December 19, 1985, January 9, 1986, January 15, 1986, January 25, 1986, January 27, 1986, January 31, 1986, February 11, 1986 and April 18, 1986, the testimony of Herman Coombs, other documentary evidence presented, respondent TONY MORFESIS is found to have failed to comply with the December 17, 1985 and January 16, 1986 Orders, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from December 17, 1985.

b) Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120° fahrenheit.



3) Such non-compliance constitutes separate and distinct civil contempts of this Court's December 17, 1985 and January 16, 1986 Orders, in that it was reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's December 17, 1985 and January 16, 1986 Orders and warrants the imposition of a criminal jail sentence. TONY MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when TONY MORFESIS is brought before the court pursuant to provisions contained herein. The sentence imposed in



this matter shall be served consecutively to any other sentence imposed by this court upon TONY MORFESIS in any other matter.

IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of TONY MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such further disposition as may be ordered by this Court.

If TONY MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of



Corrections and the Department of  
Corrections shall produce him at 9:30 a.m.  
when the Court shall next be in session.

SO ORDERED:

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated August 25, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----<sup>X</sup>  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

ANDONIS MORFESIS,  
EDGECOMBE EQUITIES

-----<sup>X</sup>  
**WARRANT OF ARREST**

Index HP-1625/85

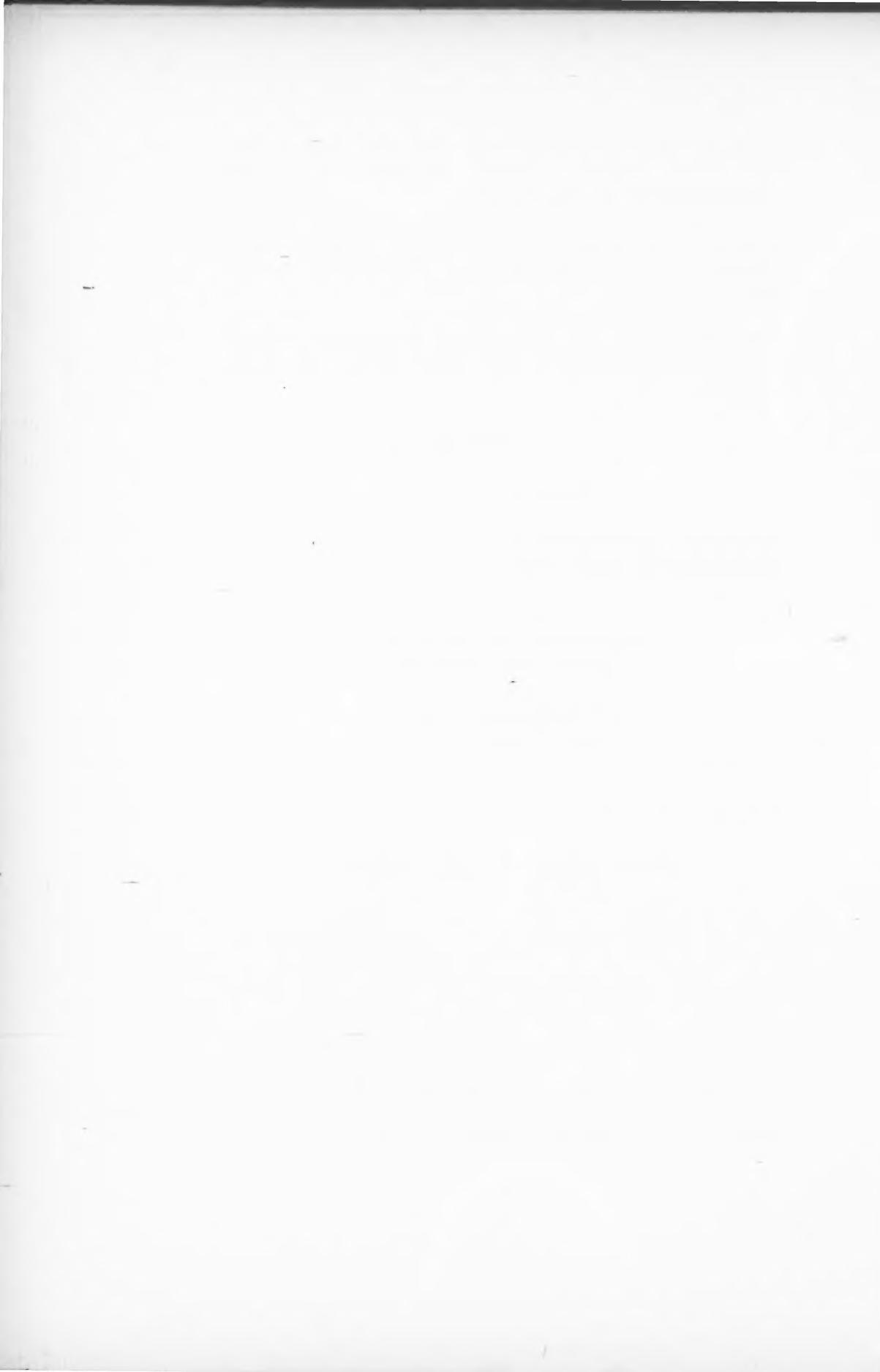
Premises:

323 Edgecombe Ave.  
New York, N.Y.

-----  
P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for  
failure to comply with Orders entered



January 9, 1986 and January 17, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

1) ANDONIS MORFESIS was properly served the January 9, 1986 and January 17, 1986 Orders and ANDONIS MORFESIS was properly served with the April 15, 1986 Order to Show Cause to Punish for Contempt.



2) Upon the DHPD inspection reports dated January 25, 1986, and March 21, 1986 the testimony of Inspector Deejen other documentary evidence presented, respondent ANDONIS MORFESIS is found to have failed to comply with the January 17, 1986 Orders, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from January 9, 1986.

b) Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120° fahrenheit.

3) Such non-compliance constitutes separate and distinct civil contempts of this Court's January 9, 1986 and January 17, 1986 Orders, in that it was reasonably



calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's January 9, 1986 and January 17, 1986 Orders and warrants the imposition of a criminal jail sentence. ANDONIS MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when ANDONIS MORFESIS is brought before the court pursuant to provisions contained herein. The sentence imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANDONIS MORFESIS in any other matter.



IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANDONIS MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such further disposition as may be ordered by this Court.

If ANDONIS MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of Corrections and the Department of



Corrections shall produce him at 9:30 a.m.  
when the Court shall next be in session.

SO ORDERED:

---

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

---

CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated August 25, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

ANDONIS MORFESIS, and  
182 E. 122nd ST. EQUITIES,

Respondents.

-----X  
**WARRANT OF ARREST**

Index HP-519/86

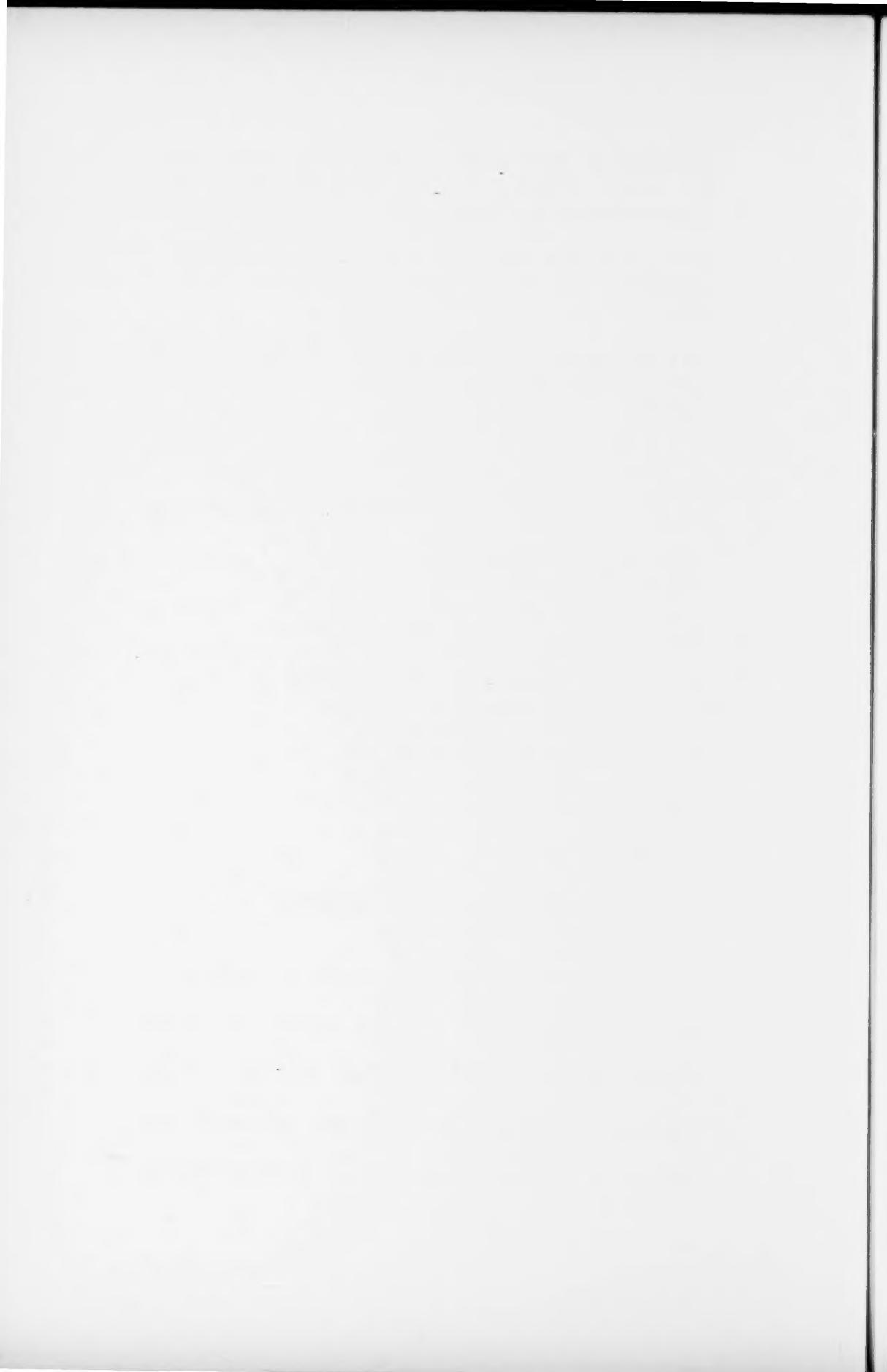
Premises:

182 E. 122nd St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for  
failure to comply with Order entered March



6, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Michael Stepper, of counsel, and Allison, Kaufman & Greenberg, by L. Jeffrey Roth, appearing in opposition thereto, Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

- 1) ANDONIS MORFESIS was properly served the March 6, 1986 Order and ANDONIS MORFESIS was properly served with the June 5, 1986 Order to Show Cause to Punish for Contempt.



2) Upon the DHPD inspection reports dated March 31, 1986, the testimony of Evelyn Ortiz, Hilda Graziani, Margarita Rivera and Inspection Weston, other documentary evidence presented, respondent ANDONIS MORFESIS is found to have failed to comply with the March 6, 1986 Order, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from March 6, 1986.

b) Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120° fahrenheit.

3) Such non-compliance constitutes separate and distinct civil contempts of this Court's March 6, 1986 Order, in that it was



reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's March 6, 1986 Order and warrants the imposition of a criminal jail sentence. ANDONIS MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when ANDONIS MORFESIS is brought before the court pursuant to provisions contained herein. The sentence imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANDONIS MORFESIS in any other matter.



IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANDONIS MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such further disposition as may be ordered by this Court.

If ANDONIS MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of Corrections and the Department of



Corrections shall produce him at 9:30 a.m.  
when the Court shall next be in session.

SO ORDERED:

---

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

---

CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated August 25, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

ANTONIO MORFESIS

Respondent.

-----X  
**WARRANT OF ARREST**

Index HP-1536/85

Premises:

541 West 133rd St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for  
failure to comply with Orders entered



December 17, 1985 and January 16, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

1) ANTONIO MORFESIS was properly served the December 17, 1985 and January 16, 1986 Orders and ANTONIO MORFESIS was properly served with the April 15, 1986 Order to Show Cause to Punish for Contempt.



2) Upon the DHPD inspection reports dated December 28, 1985, January 11, 1986, January 27, 1986, January 30, 1986, February 6, February 8, 1986, February 18, 1986, March 11, 1986, the testimony of Herman Coombs, other documentary evidence presented, respondent ANTONIO MORFESIS is found to have failed to comply with the December 17, 1985 and January 16, 1986 Orders, by failing to:

- a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from December 17, 1985.
- b) Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120° fahrenheit.



3) Such non-compliance constitutes separate and distinct civil contempts of this Court's December 17, 1985 and January 16, 1986 Orders, in that it was reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's December 17, 1985 and January 16, 1986 Orders and warrants the imposition of a criminal jail sentence. ANTONIO MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when ANTONIO MORFESIS is brought before the court pursuant to provisions contained herein. The sentence



imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANTONIO MORFESIS in any other matter.

IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANTONIO MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such further disposition as may be ordered by this Court.



If ANTONIO MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of Corrections and the Department of Corrections shall produce him at 9:30 a.m. when the Court shall next be in session.

SO ORDERED:

---

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

---

CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated August 14, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----x

DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

24 WEST 132 EQUITIES, INC., and  
ANDONIS MORFESIS,

Respondents.

-----x

**WARRANT OF ARREST**

Index HP-1534/85

Premises:

24 West 132nd St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order



finding respondent in contempt of court for failure to comply with Orders entered December 17, 1985 and January 16, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

**IT IS HEREBY FOUND THAT:**

1) ANDONIS MORFESIS was properly served the December 17, 1985 and January 16, 1986 Orders and ANDONIS MORFESIS was properly served with the April 15, 1986

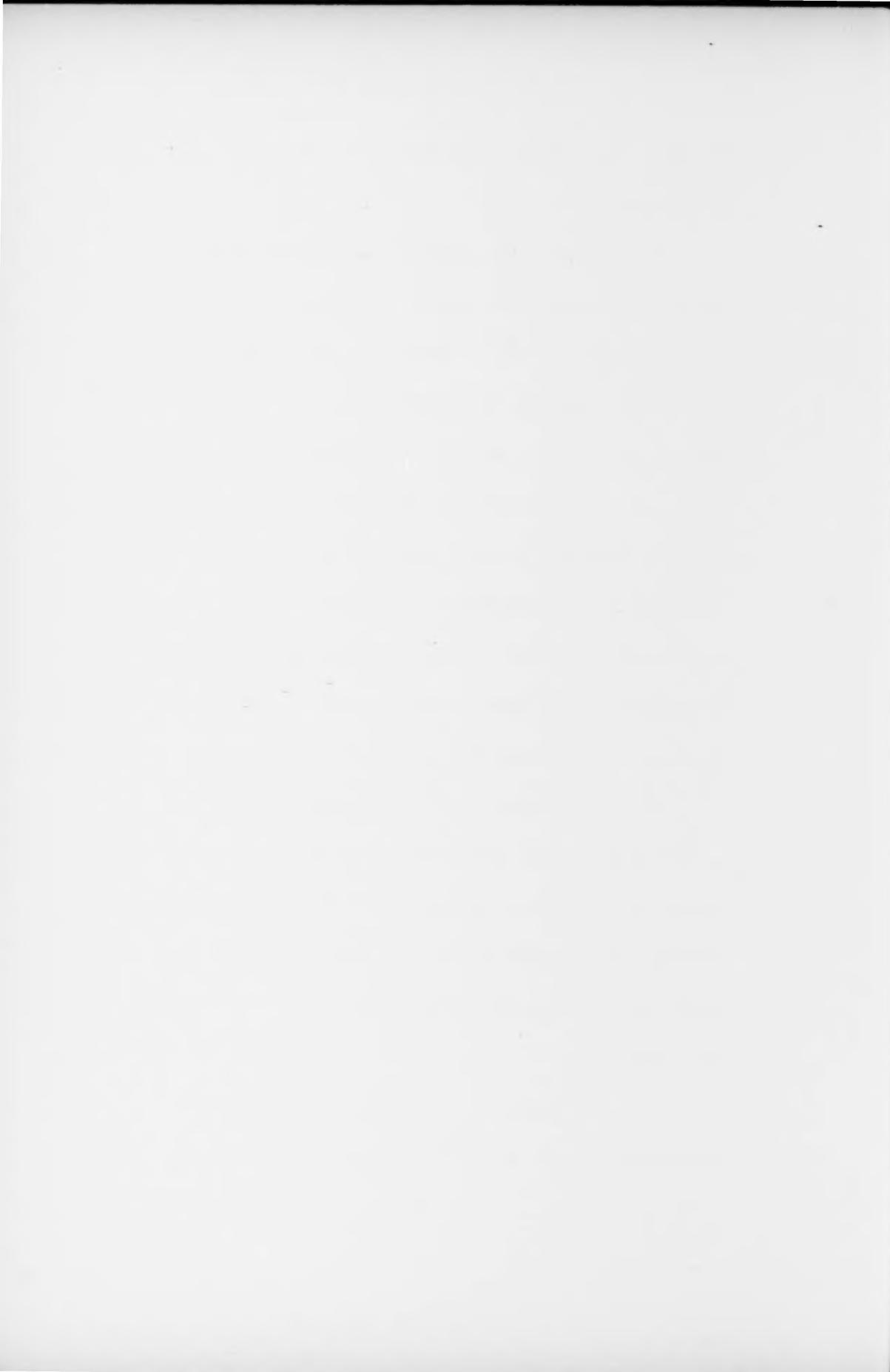


Order to Show Cause to Punish for  
Contempt.

2) Upon the DHPD inspection reports dated December 29, 1985, January 23, 1986, January 29, 1986, February 13, February 26, 1986, March 6, 1986, March 12, 1986, March 18, 1986, March 21, 1986, March 26, 1986, the testimony of Herman Coombs and Verna Billings other documentary evidence presented, respondent ANDONIS MORFESIS is found to have failed to comply with the December 17, 1985 and January 16, 1986 Orders, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from December 17, 1985.

b) Supply every bath, shower, washbasin and sink in every dwelling unit



with hot water at a constant minimum temperature of 120° fahrenheit.

3) Such non-compliance constitutes separate and distinct civil contempts of this Court's December 17, 1985 and January 16, 1986 Orders, in that it was reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's December 17, 1985 and January 16, 1986 Orders and warrants the imposition of a criminal jail sentence. ANDONIS MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when ANDONIS MORFESIS is



brought before the court pursuant to provisions contained herein. The sentence imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANDONIS MORFESIS in any other matter.

IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANDONIS MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such



further disposition as may be ordered by  
this Court.

If ANDONIS MORFESIS is arrested at a  
time when the Court is not in session, he is  
to be lodged with the Department of  
Corrections and the Department of  
Corrections shall produce him at 9:30 a.m.  
when the Court shall next be in session.

SO ORDERED:

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HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

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CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated October 8, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

CHANCE EQUITIES, INC.,  
ANDONIS MORFESIS and MARIA MORFESIS,

Respondents.

-----X  
**WARRANT OF ARREST**

Index HP-1535/85

Premises:

537 West 133rd St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J.H.C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for  
failure to comply with Orders entered

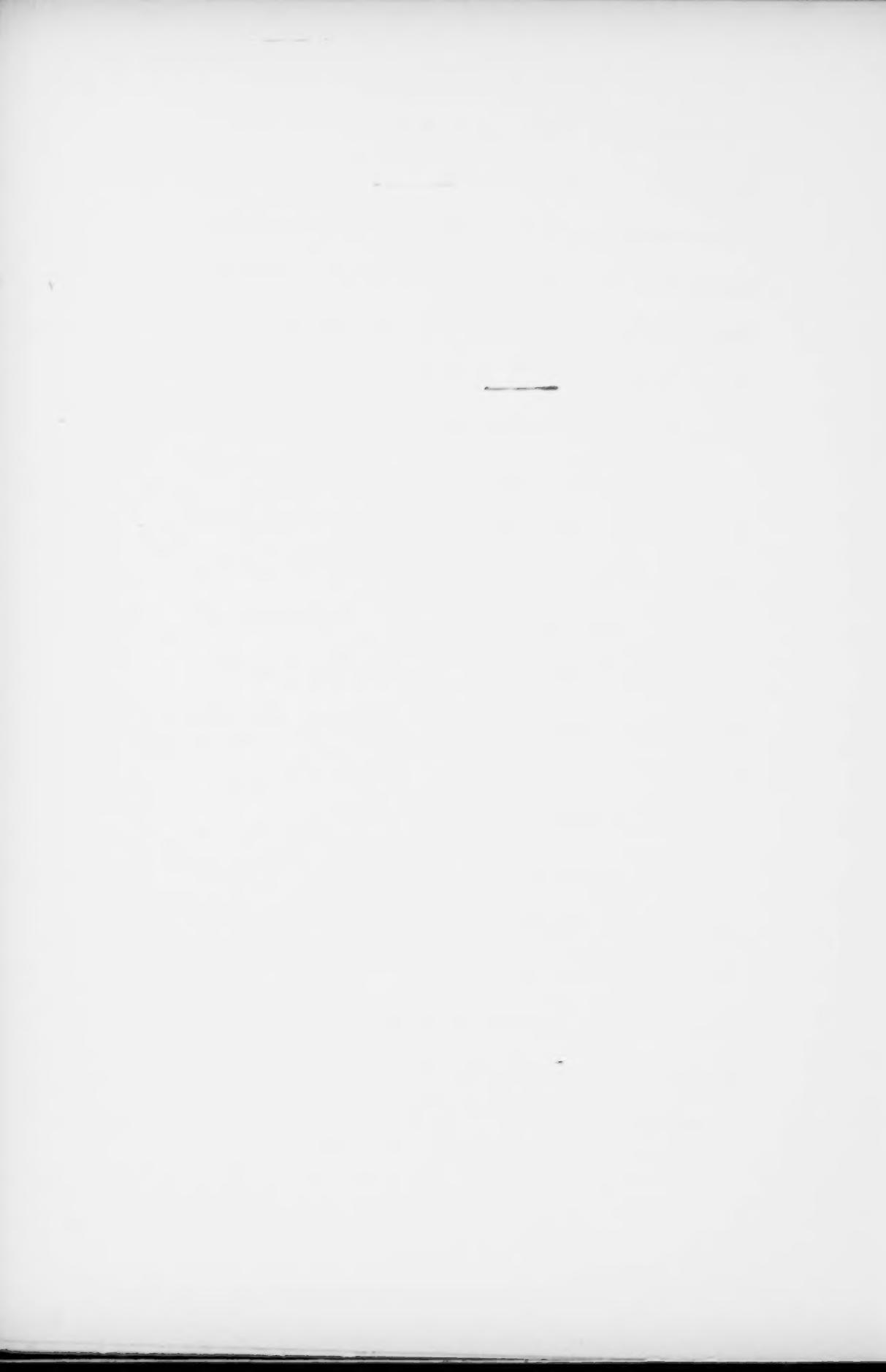


December 17, 1985 and January 16, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

1) ANDONIS MORFESIS was properly served the December 17, 1985 and January 16, 1986 Orders and ANDONIS MORFESIS was properly served with the April 15, 1986 Order to Show Cause to Punish for Contempt.



2) Upon the DHPD inspection reports dated January 3, 1986, Jauary 18, 1986, January 24, 1986, February 6, 1986, February 8, 1986, February 11, 1986, February 18, 1986, February 28, 1986, March 6, 1986, March 10, 1986, March 11, 1986, March 14, 1986, March 18, 1986, march 20, 1986, April 7, 1986, April 14, 1986, April 17, 1986, April 24, 1986, April 19, 1986, and May 6, 1986, the testimony of Herman Coombs, other documentary evidence presented, respondent ANDONIS MORFESIS is found to have failed to comply with the December 17, 1985 and January 16, 1986 Orders, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from December 17, 1985.



b) Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120° fahrenheit.

3) Such non-compliance constitutes separate and distinct civil contempts of this Court's December 17, 1985 and January 16, 1986 Orders, in that it was reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's December 17, 1985 and January 16, 1986 Orders and warrants the imposition of a criminal jail sentence. ANDONIS MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of



the court and the court may consider such reduction when ANDONIS MORFESIS is brought before the court pursuant to provisions contained herein. The sentence imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANDONIS MORFESIS in any other matter.

IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANDONIS MORFESIS and bring him before this Court in Part L, 111 Centre



St., New York, N.Y., Room 526 for such further disposition as may be ordered by this Court.

If ANDONIS MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of Corrections and the Department of Corrections shall produce him at 9:30 a.m. when the Court shall next be in session.

SO ORDERED:

---

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

---

CLERK OF THE COURT



ORDER OF THE CIVIL COURT OF THE CITY  
OF NEW YORK, Dated November 24, 1986  
(Denominated a "Warrant")

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART  
18L

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT OF THE CITY OF NEW  
YORK,

Petitioner,

-against-

232 WEST ASSOCIATES, ANDONIS  
MORFESIS, JOSEPH COLON,

Respondents.

-----X  
WARRANT OF ARREST

Index HP-1544/85

Premises:

236-38 W. 149th St.  
New York, N.Y.

P R E S E N T :

HON. LEWIS R. FRIEDMAN  
J. H. C.

A motion having duly come on before me  
on April 25, 1986, by an order to Show  
Cause dated April 15, 1986 for an Order  
finding respondent in contempt of court for

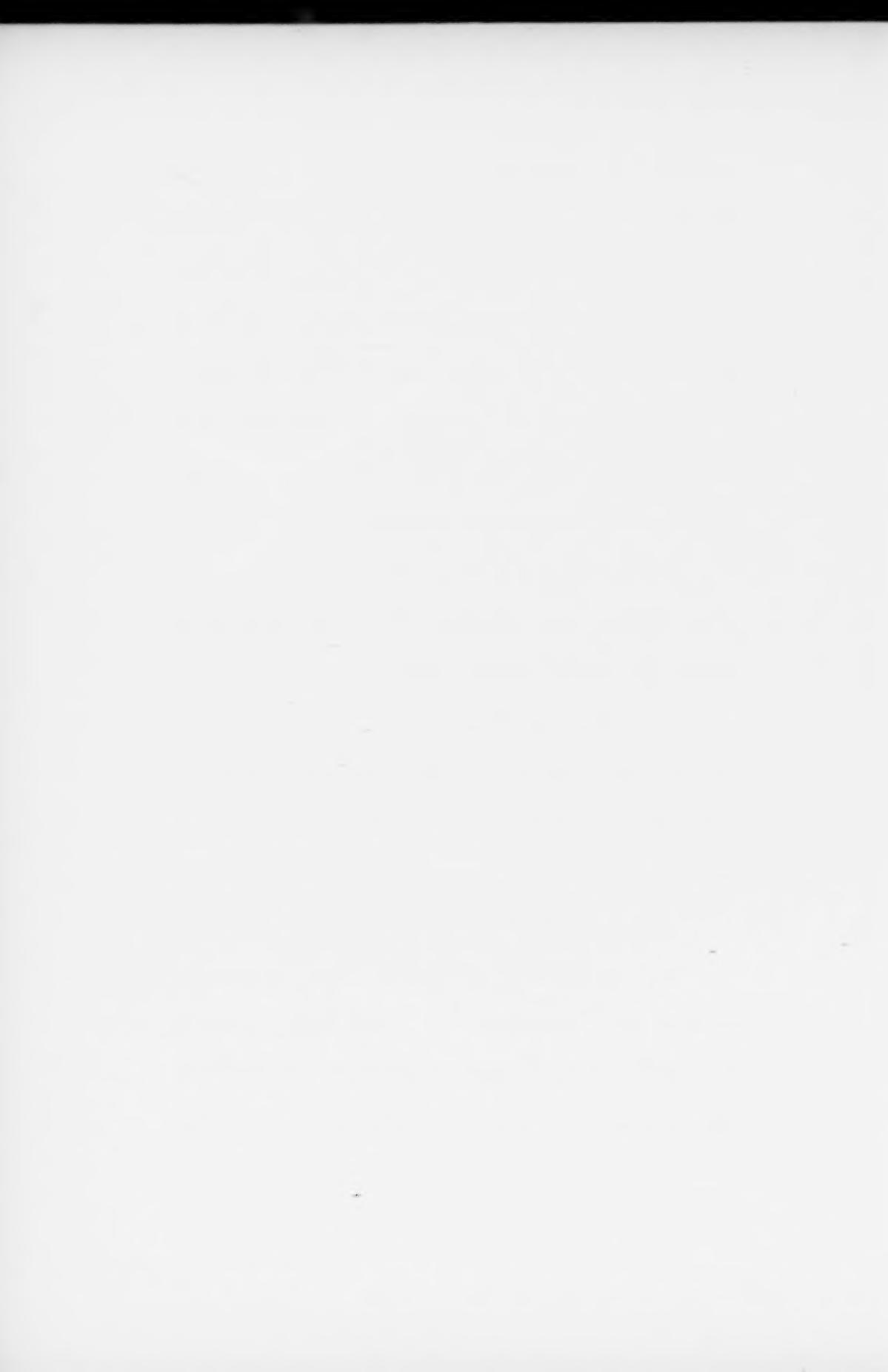


failure to comply with Orders entered December 17, 1985 and January 16, 1986, petitioner Department of Housing Preservation and Development having appeared by its attorney Bruce Kramer, Esq., Lawrence P. Cartelli, of counsel, and Israel & Krasner by Arthur J. Israel having appeared in opposition thereto.

NOW, upon motion of petitioner, and after filing and reading the aforementioned Order to Show Cause with proof of service thereof, the affirmation of Lawrence P. Cartelli in support of the contempt motion, and after conducting a hearing on the issues.

IT IS HEREBY FOUND THAT:

1) ANDONIS MORFESIS was properly served the December 17, 1985 and January 16, 1986 Orders and ANDONIS MORFESIS was properly served with the April 15, 1986



Order to Show Cause to Punish for  
Contempt.

2) Upon the DHPD inspection reports dated January 3, 1986, January 11, 1986, January 15, 1986, January 25, 1986, February 6, 1986, February 11, 1986, February 25, 1986, the testimony of Herman Coombs, other documentary evidence presented, respondent ANDONIS MORFESIS is found to have failed to comply with the December 17, 1985 and January 16, 1986 Orders, by failing to:

a) Provide 68° fahrenheit heat in every portion of the premises used for living when the outside temperature fell below 55° during the hours of 6 a.m. and 10 p.m. on each and every day required from December 17, 1985.

b) Supply every bath, shower, washbasin and sink in every dwelling unit



with hot water at a constant minimum temperature of 120° fahrenheit.

3) Such non-compliance constitutes separate and distinct civil contempts of this Court's December 17, 1985 and January 16, 1986 Orders, in that it was reasonably calculated to and actually did defeat, impair, impede and prejudice petitioner by thwarting its efforts to have the subject premises restored to minimum housing standards.

4) Such non-compliance was willful and constitutes separate and distinct criminal contempts of this Court's December 17, 1985 and January 16, 1986 Orders and warrants the imposition of a criminal jail sentence. ANDONIS MORFESIS is to be imprisoned for a period of thirty days in the jail of the county where the court is sitting. Said sentence may be reduced in the discretion of the court and the court may consider such reduction when ANDONIS MORFESIS is



brought before the court pursuant to provisions contained herein. The sentence imposed in this matter shall be served consecutively to any other sentence imposed by this court upon ANDONIS MORFESIS in any other matter.

IT IS HEREBY DIRECTED:

1) That for his criminal contempts of the Court's order for his failure to provide adequate heat and hot water at the subject premises, the Sheriff of the County of New York or the Sheriff of any County within the State of New York or other enforcement officer of any jurisdiction wherein the offender may be found, to whom a certified copy of this Order shall be delivered shall forthwith and without further process take the body of ANDONIS MORFESIS and bring him before this Court in Part L, 111 Centre St., New York, N.Y., Room 526 for such



further disposition as may be ordered by this Court.

If ANDONIS MORFESIS is arrested at a time when the Court is not in session, he is to be lodged with the Department of Corrections and the Department of Corrections shall produce him at 9:30 a.m. when the Court shall next be in session.

SO ORDERED:

---

HON. LEWIS R. FRIEDMAN,  
J.H.C.

ENTERED:

---

CLERK OF THE COURT



(ORDER OF THE COURT OF APPEALS  
DISMISSING APPEAL)

STATE OF NEW YORK  
COURT OF APPEALS

At a session of the Court, held at  
Court of Appeals Hall in the City of  
Albany on the twelfth day of September  
A.D. 1989

PRESENT, HON. SOL WACHTLER,  
Chief Judge, Presiding.

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Mo. No. 893 SSD 60

In the Matter of the Department of Housing  
Preservation and Development of the City  
of New York,

Respondent,

v.

24 West 132 Equities, Inc.,

Respondent,

and Adonis Morfesis,

Appellant.

(Action No. 1)

---

and two additional actions:

Mtr of DHPD v. Chance Equities  
(Action No. 2)

Mtr of DHPD v. 232 West Associates  
(Action No. 3)

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The appellant having filed notices of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeals be and the same hereby are dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the proceedings within the meaning of the Constitution.

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Donald M. Sheraw  
Clerk of the Court



## **NEW YORK JUDICIARY LAW**

### **§751. Punishment for Criminal Contempts**

1. Except as provided in subdivisions (2), (3) and (4), punishment for a contempt, specified in section seven hundred fifty, may be by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where the punishment for contempt is based on a violation of an order of protection issued under section 530.12 or 530.13 of the criminal procedure law, imprisonment may be for a term not exceeding three months. Where a person is committed to jail, for the nonpayment of fine, imposed under this section, he must be discharged at the expiration of thirty days; but where he is also committed for a definite time, the thirty



days must be computed from the expiration of the definite time.

Such a contempt, committed in the immediate view and presence of the court, may be punished summarily; when not so committed, the party charged must be notified of the accusation, and have a reasonable time to make a defense.

§756. Application to punish for contempt; procedure

An application to punish for a contempt punishable civilly may be commenced by notice of motion returnable before the court or judge authorized to punish for the offense, or by an order of such court or judge requiring the accused to show cause before it, or him, at a time and place therein specified, why the accused should not be punished for the alleged offense. The application shall be noticed, heard and determined in accordance with the procedure



for a motion on notice in an action in such court, provided, however, that, except as provided in section fifty-two hundred and fifty of the civil practice law and rules or unless otherwise ordered by the court, the moving papers shall be served no less than ten and no more than thirty days before the time at which the application is noticed to be heard. The application shall contain on its face a notice that the purpose of the hearing is to punish the accused for a contempt of court, and that such punishment may consist of fine or imprisonment, or both, according to law together with the following legend printed or type written in a size equal to at least eight point bold type:

**WARNING:  
YOUR FAILURE TO APPEAR  
IN COURT MAY RESULT IN  
YOUR IMMEDIATE ARREST  
AND IMPRISONMENT FOR  
CONTEMPT OF COURT.**



**New York City Administrative Code:**

**§27-2097 (formerly D26-41.01)**  
**Registration; time to file**

a. The owner of a dwelling required to register under this article shall register with the department in accordance with the provisions of this article.

b. A registration statement shall be filed:

(1) For every existing multiple dwelling. A registration statement filed by the present owner of a dwelling pursuant to the requirements of the prior law shall constitute compliance with this section.

.....

(5) Within such time as provided in section 27-2099 of this article, in the case of a change of ownership where registration is required under this article.

c. An owner who is required to register shall file a new registration statement every three years.



d. An owner who is required to register shall file a new registration statement on the registration date assigned to that dwelling by the department whether or not that owner filed a registration statement for that dwelling within the previous three years.

e. The registration date of a dwelling shall be a calendar date and year assigned by the department to that dwelling for the purpose of registration on such date at intervals of three years.

**§27-2098 (formerly D26-41.03)  
Registration statement; contents**

a. The registration statement shall include the following information:

(1) An identification of the premises by block and lot number, and by the street numbers and names of all streets contiguous to the dwelling, or by such other description as will enable the department to locate the dwelling....



(2) An identification of the owner by name, residence and business address. If the owner is a corporation, the identification shall include the name and address of such corporation together with the names, residences and business addresses of the officers....

.....

(4) If a dwelling is a multiple dwelling, the number of a telephone within a radius of 50 miles of the city limits where an owner or officer, if the owner is a corporation, or the managing agent may reasonably be expected to be reached at all times. The telephone number contained in the registration statement shall not constitute a public record and shall be accessible only to duly authorized employees or officers of the department and used exclusively by such personnel in connection with an emergency arising on the premises for which the owner



is responsible under the provisions of the multiple dwelling law or this code. The department may promulgate regulations to implement the provisions of this paragraph.

(5) If a dwelling is a one- or two-family dwelling and the owner does not reside within the city, the name and address of a natural person who is over the age of twenty-one years and a resident of the city, designated by the owner to receive service of notices, orders or summonses issued by the department.

b. The registration statement shall be signed by the owner or, if the owner is a corporation, by any officer. In the appropriate case, either the managing agent or the designee described in paragraph five of subdivision a of this section shall sign the statement to indicate consent to the designation except that such consent is not required if an owner or officer of a



corporation is registered as the managing agent.

**§27-2099 (formerly D26-41.05)**

**Registration statement; change of ownership or title.**

a. When the owner of a dwelling, who is required to register under this article, conveys title to the dwelling to another, the transferor shall, on the day of such transfer, notify the department by regular mail of the name, residence and business address of the new owner, or, if the new owner is a corporation, of the name and address of such corporation. The registration statement in accordance with section 27-2098 of this article shall be presented by the new owner to the office of the register of the city of New York, or the county clerk as required by subdivision c of this section if such owner records such



deed, or to the department if the deed is not recorded, and in no event more than five days from the date of taking of title; however, the failure by a new owner to file such registration statement shall not impair the validity of his or her title.

b. When the ownership of a dwelling changes by operation of law, the new owner, is required to register, shall file a registration statement in accordance with section 27-2098 of this article not more than thirty days from the date that the title devolved upon him or her.

**§27-2100 (formerly D26-41.07)  
Registration Statement; change of address**

An owner, who is required to register under this article, shall inform the department and shall amend his or her registration statement within five days if there is a change of address of the owner, a



change in the list of officers of the owner corporation, or a change of address of any of such listed officers. A filing fee of five dollars shall be required for the amended registration statement.